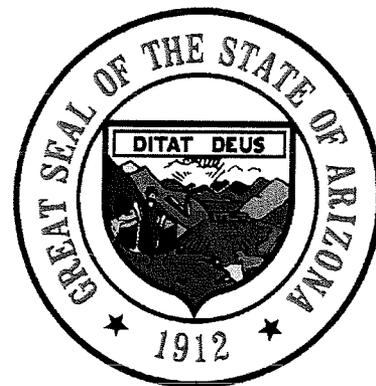


**ARIZONA
WATER
BANKING
AUTHORITY
STUDY
COMMISSION**

FINAL REPORT



DECEMBER 1998

Arizona Water Banking Authority Study Commission

Final Report

Prepared by the Arizona Department of Water Resources

December 1998

Arizona Water Banking Authority

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December 10, 1998

The Honorable Jane Dee Hull
Governor, State of Arizona

The Honorable Jeff Groskost
Speaker, House of Representatives

The Honorable Brenda Burns
President, Arizona State Senate

Citizens of the State of Arizona:

On behalf of the members of the Arizona Water Banking Authority Study Commission (Study Commission), it is our pleasure to present our Final Report documenting our findings and recommendations. This report represents the culmination of a nearly two-year effort by the Study Commission's fourteen members. Over those two years, nearly sixty meetings were held. The Study Commission made a point of seeking public input by providing briefings and public meetings throughout the State.

The Legislature created the Study Commission in 1996 as an adjunct to the Arizona Water Banking Authority (AWBA). The Study Commission was charged with reviewing the existing powers and duties of the AWBA and also looking for new opportunities for water banking to enhance Arizona's water management program. The Study Commission completed this mission and has prepared a series of findings and recommendations. Some of the recommendations are advisory to the AWBA and to other state and federal agencies whose policies and programs interface with the water banking effort. Other recommendations are to the Legislature in the form of suggested statutory amendments which will clarify or expand the AWBA responsibilities.

In general, the Study Commission found that the AWBA program is working very well and that its current mission is valuable and appropriate. The water banking program will grow in importance over time and it is probable that more responsibilities will be added to the AWBA in the future. While the Study Commission identified and investigated a wide range of innovative concepts, in many cases it found that these ideas were premature and should not be implemented at the present time. The new responsibilities that the Study Commission recommends are compatible with the existing program and will offer the opportunity for even greater benefits and water security for the citizens of Arizona.

Sincerely,

Rita P. Pearson
Chairperson

AUTHORITY MEMBERS
Rita P. Pearson, Chairman
Tom Griffin, Vice-Chair
Bill Chase, Secretary
Grady Gammage, Jr.
Richard S. Walden

EX OFFICIO MEMBERS
Senator Pat Conner
Rep. Gail Griffin

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Introduction

The Arizona Water Banking Authority Study Commission

The Arizona Water Banking Authority Study Commission (Study Commission) was created by the Arizona Legislature in 1996 through the enactment of House Bill 2494. The Study Commission is ancillary to the Arizona Water Banking Authority (AWBA), which was created by the same legislation. The Study Commission's role is to assist the AWBA and the Legislature in evaluating the effectiveness of the powers and duties that were initially authorized by the enabling legislation, and then to suggest modifications as appropriate. As the Study Commission proceeded with its deliberations, it concluded that many issues related to the current and future activities of the AWBA also involve other governmental agencies including the Arizona Department of Water Resources (ADWR), the Central Arizona Water Conservation District (CAWCD), and the United States Bureau of Reclamation (USBR). Therefore, many of the Study Commission's recommendations are addressed directly to those agencies.

The Study Commission held its first meeting in September 1996 and met regularly through November 1998. In November 1997, the Study Commission issued an Interim Report describing its progress which was transmitted to the Governor and the Legislature. The report was also widely distributed to the general public. Monthly progress reports were also made at the meetings of the AWBA.

This Final Report summarizes the various activities and investigations of the Study Commission. The report also documents the Study Commission's final findings and recommendations as required by H.B. 2494.

Purpose of the Arizona Water Banking Authority Study Commission

The Arizona Legislature charged the Study Commission with performance of the following tasks:

- Study the existing powers and duties of the AWBA during its first year of operation and make recommendations regarding any necessary changes to the powers and duties.
- Study the opportunities for additional Water Banking Authority uses within Arizona and in cooperation with California and Nevada.
- Identify appropriate mechanisms that will enable Indian communities that hold entitlements to Colorado River water to participate in water banking with the AWBA.
- Make recommendations for continuation or modification of the tax collected pursuant to Arizona Revised Statutes section 48-3751.02 (*ad valorem* tax levied by the CAWCD in Maricopa, Pinal and Pima Counties that may be used for water banking purposes).

The Study Commission evaluated a range of issues associated with each of these four general tasks.

<input type="checkbox"/> Study Commission Members
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The Study Commission was composed of fourteen members. Five of the members represent the AWBA board members and the other nine were appointed by Rita Pearson, the Director of the ADWR. The appointed members represent municipal and industrial water (M&I) users, agricultural water users including those that do not use the Central Arizona Project (CAP) facilities, persons interested in CAP issues, persons interested in Colorado River issues, persons from Indian communities, and persons affiliated with environmental interests. All appointed members were required to be knowledgeable in water resources management in Arizona.

The following individuals served on the Study Commission:

- **Rita Pearson**, Chairman: Ms. Pearson is the Director of ADWR and Chairman of the AWBA.
- **Mary Ann Antone**: Ms. Antone is an elected representative from the Sif Oidak District to the Tohono O'odham Tribal Council Legislative Branch.
- **Karen Barfoot**: Ms. Barfoot is the Water Resources Advisor to the City of Chandler and is a member of the Arizona Water Resources Advisory Board.
- **Cynthia Chandley**, Esq.: Ms. Chandley is senior counsel and manager of land and water resources for the Phelps Dodge Corporation.
- **Bill Chase**: Mr. Chase serves on the board of the AWBA and is also the Water Resources Advisor for the City of Phoenix.
- **Larry Dozier**: Mr. Dozier is the Deputy General Manager of the CAWCD. Mr. Dozier serves on the Study Commission on behalf of Grady Gammage, Jr., Esq., who is the President of the CAWCD Board and a member of the AWBA.
- **Tom Griffin**: Mr. Griffin serves on the AWBA and is also the Chairman of the Mohave County Water Authority.
- **Gary Hansen**: Mr. Hansen is the Water Resources Director for the Colorado River Indian Tribes.
- **Mark Myers**: Mr. Myers operates a private consulting practice in Tucson which focuses on multiple purpose projects related to land use, natural resources, water policy, and environmental policy.
- **Paul Orme**, Esq.: Mr. Orme is an attorney specializing in water and agricultural law issues. He is also a member of the Arizona Water Protection Fund Commission.
- **Donald Pope**: Mr. Pope is the manager of the Yuma County Water Users Association.
- **Lawrence Robertson**, Esq.: Mr. Robertson is an attorney in private practice in Tucson who specializes in water, energy, municipal and public utility law.

- **John Sullivan:** Mr. Sullivan is an associate general manager for the Water Group at the Salt River Project (SRP) and is also a member of the Arizona Water Resources Advisory Board.
- **Richard Walden:** Mr. Walden serves on the AWBA and also operates farms in Arizona.

The ADWR and the AWBA provide staff support for the Study Commission.

Organization and Meetings

The Study Commission began in September 1996 with an organizational meeting. The group decided that it would spend the first few months reviewing and discussing background information so that all members could work from a common knowledge base. Presentations were made concerning:

- Current powers and duties of the AWBA
- Arizona's uses of Colorado River water
- Interest by Southern Nevada Water Authority (SNWA) and California water users in water banking with the AWBA
- Laws governing the Colorado River
- Colorado River operations
- Colorado River water supplies and demands
- Priorities to Colorado River water within Arizona
- Interstate banking provisions
- Water banking activities and organizations in other states

Following this phase, the Study Commission established subcommittees to study and discuss critical issue areas. The subcommittees met frequently to identify issues, review studies and prepare recommendations. Each subcommittee prepared an interim report which was reviewed by the full Study Commission at meetings in September and October 1997.

The five subcommittees and their members are listed below.

Planning and Modeling Assumptions

Larry Dozier (Chairman), Karen Barfoot, Bill Chase, Mark Myers, Rita Pearson, Don Pope, and John Sullivan

Interstate and Intrastate Banking and Marketing Issues

Mark Myers (Chairman), Larry Dozier, Gary Hansen, Paul Orme, Larry Robertson, Tom Griffin, Cynthia Chandley, Don Pope, Bill Chase, and Karen Barfoot

Water Banking Benefits Outside of the CAP Service Area

Tom Griffin (Chairman), Larry Dozier, Gary Hansen, Don Pope, Cynthia Chandley, and Bill Chase

Indian Issues

Mary Ann Antone (Co-chairman), Gary Hansen (Co-chairman), John Sullivan, Karen Barfoot, Cynthia Chandley, and Larry Robertson

Tax and Financial Issues

Larry Dozier (Chairman), Karen Barfoot, Bill Chase, Mark Myers, Don Pope, John Sullivan

The Study Commission issued its Interim Report to the Legislature in November 1997. The report was distributed to the public in its full format and in a summary booklet format. It was also available for review on the internet on the AWBA Web page.

After completion of the Interim Report, the Study Commission determined that it needed to continue meeting in subcommittees until each subcommittee could propose final recommendations. This process lasted from about January 1998 through April 1998.

Starting in May 1998, the Study Commission began a series of monthly meetings to review the results of the subcommittees' efforts, and craft its final findings and recommendations. This final phase of the process went through several iterations. The subcommittee recommendations were reviewed and were either adopted or modified by the full Study Commission. Draft legislation was prepared for those recommendations that require modification of existing statutes or create additional responsibilities for the AWBA. The Study Commission recommendations were approved by consensus.

The following table lists the meetings held by the Study Commission and the subcommittees.

<i>Date</i>	<i>Type of Meeting</i>
September 11, 1996	Full Study Commission
October 31, 1996	Full Study Commission
November 18, 1996	Full Study Commission
December 16, 1996	Full Study Commission
January 23, 1997	Full Study Commission
February 26, 1997	Indian Issues
February 27, 1997	Full Study Commission
March 26, 1997	Indian Issues - All Tribes
March 27, 1997	Full Study Commission
March 28, 1997	Indian Issues
April 15, 1997	Planning/Modeling Assumptions
April 16, 1997	Benefits Outside CAP Service Area
April 21, 1997	Indian Issues - Tohono O'odham
April 24, 1997	Inter/Intrastate Banking & Marketing
April 24, 1997	Indian Issues
May 15, 1997	Planning/Modeling Assumptions
May 21, 1997	Benefits Outside CAP Service Area
May 22, 1997	Indian Issues
May 22, 1997	Inter/Intrastate Banking & Marketing

The Arizona Water Banking Authority Study Commission

<i>Date</i>	<i>Type of Meeting</i>
May 30, 1997	Indian Issues - Fort McDowell
June 4, 1997	Planning/Modeling Assumptions
June 16, 1997	Indian Issues - Colorado River Tribes
June 26, 1997	Inter/Intrastate Banking & Marketing
June 26, 1997	Indian Issues
June 30, 1997	Benefits Outside CAP Service Area
July 14, 1997	Indian Issues - Yavapai-Apache
August 19, 1997	Benefits Outside CAP Service Area
August 27, 1997	Inter/Intrastate Banking & Marketing
August 27, 1997	Indian Issues
August 28, 1997	Planning/Modeling Assumptions
September 6, 1997	Indian Issues - Hualapai Tribe
September 10, 1997	Planning/Modeling Assumptions
September 12, 1997	Indian Issues - Gila River
September 25, 1997	Full Study Commission
October 23, 1997	Full Study Commission
December 4, 1997	Inter/Intrastate Banking & Marketing
December 11, 1997	Tax and Financial Issues
December 11, 1997	Indian Issues
January 21, 1998	Benefits Outside CAP Service Area
January 22, 1998	Inter/Intrastate Banking & Marketing
January 28, 1998	Indian Issues
February 4, 1998	Tax and Financial Issues
February 25, 1998	Inter/Intrastate Banking & Marketing
February 25, 1998	Indian Issues
March 18, 1998	Benefits Outside CAP Service Area
March 31, 1998	Inter/Intrastate Banking & Marketing
March 31, 1998	Tax and Financial Issues
March 31, 1998	Indian Issues
May 5, 1998	Inter/Intrastate Banking & Marketing
May 5, 1998	Tax and Financial Issues
May 5, 1998	Indian Issues
May 18, 1998	Indian Issues
May 20, 1998	Benefits Outside CAP Service Area
June 11, 1998	Full Study Commission
July 20, 1998	Full Study Commission
August 25, 1998	Full Study Commission
September 23, 1998	Full Study Commission
October 8, 1998	Full Study Commission
November 13, 1998	Full Study Commission

Public Involvement

Throughout the Study Commission's deliberations, public input and review was sought. All of the Study Commission's meetings were open meetings and the public was encouraged to attend and participate. All subcommittee meetings were conducted in an informal style and members of the public were provided the opportunity to freely participate in the discussions and provide input.

The Indian Issues Subcommittee conducted numerous meetings with representatives of Indian Tribes. Several meetings were held at various tribal headquarters in order to provide briefings for Tribal Council members and to determine first hand how Indian Communities felt they could participate in water banking activities. Study Commission members felt that the opportunity to visit the reservations and speak directly with Tribal Council members was extremely valuable and rewarding.

Following the completion of the Interim Report, an effort was made to seek additional public input regarding the Study Commission's progress. ADWR staff made presentations to each of the Active Management Area Groundwater Users Advisory Councils, the Mohave County Water Authority, the Tucson Regional Water Planning Council, and at the monthly meeting of the AWBA. In addition, several hundred copies of the report summary were distributed to interested parties.

Background Information

□ Current Responsibilities of the Arizona Water Banking Authority

The Arizona Water Banking Authority was created in 1996 through the enactment of House Bill 2494. The legislation identified the powers and duties of the AWBA as well as the makeup of its governing commission, its administrative structure, and its funding mechanisms. The creation of a water bank in Arizona had been previously recommended in 1994 by the Governor's CAP Advisory Committee as a way for the State to benefit more fully from its Colorado River entitlement.

H.B. 2494 established a number of responsibilities for the AWBA. Those responsibilities include:

- The AWBA is authorized to import Colorado River water through the Central Arizona Project to be stored using underground storage techniques. The AWBA is limited in that it may only purchase water that is available from within the State's annual entitlement, but was not ordered for delivery by any other water user.
- The future use of the stored water is limited to helping provide a supplemental supply in times of drought or other shortage to CAP and other Colorado River M&I water users; helping in the settlement of Indian water rights claims; and helping achieve the water management objectives of the Groundwater Code.
- The AWBA may, to the extent feasible, provide assistance to authorized entities in the states of Nevada and California by creating a supplemental water supply using underground storage and recovery techniques. The AWBA is authorized to arrange for an exchange mechanism with Arizona water users that will allow interstate partners the opportunity to recover this water.
- The AWBA is authorized to obtain water storage permits at underground storage facilities or at groundwater savings facilities. It is not authorized to own or operate those types of facilities.
- Long term storage credits held by the AWBA must be assigned to the water users who will benefit from the water. The AWBA is not authorized to recover water itself.
- The AWBA is governed by a five-person commission that is chaired by the Director of the Arizona Department of Water Resources. Also, two members of the Legislature serve as ex officio non-voting members. Administrative and technical support is provided by ADWR staff and CAWCD staff.
- Funding for the AWBA is provided from three primary sources: 1) a four-cent ad valorem tax levied by the CAWCD in Maricopa, Pinal, and Pima Counties 2) a \$2.50 per acre foot groundwater withdrawal fee assessed in the Phoenix, Pinal, and Tucson AMAs, and 3) appropriations from the state general fund.

All three revenue sources are linked to specific purposes in specific locations. To the extent the AWBA engages in interstate banking, all costs must be borne by an interstate banking partner.

Laws and Relevant Contract Provisions Pertaining to the Colorado River and the Central Arizona Project

The Arizona Water Banking Authority program is closely aligned with the operation of the Colorado River and the Central Arizona Project. One of the primary functions of the banking program is to provide a backup supply to CAP and other Colorado River M&I water users. The Study Commission investigated those aspects of the “Law of the River” and water diversion contracts that have an effect on the supplies available to the AWBA and the need for shortage protection. The most important of these provisions are summarized below.

- Colorado River Compact - Negotiated in 1922, the Colorado River compact divided the Colorado River into an Upper Basin and a Lower Basin and apportioned 7.5 million acre feet (maf) per annum to each basin.
- Boulder Canyon Project Act - The Boulder Canyon Project Act was enacted in 1928. It authorized the construction of Hoover Dam, but only if the Colorado River Compact was ratified. The Act provided a method for ratification which would not require Arizona’s approval. Another provision of note was the section which states that no person shall have the use of any water stored by Hoover Dam unless that person has a contract authorizing such use with the Secretary of the Interior.
- Arizona’s Contract for Delivery of Water with the Secretary - Arizona finally approved the terms of the Colorado River Compact in 1944, and in the same year, entered into a contract for delivery of water with the Secretary of the Interior providing Arizona with 2.8 maf of Colorado River water per annum for beneficial use within the state.
- Arizona v California - To determine whether Arizona’s 2.8 maf from the Colorado River included water it used from the Salt and Gila River systems, Arizona filed suit against California in the United States Supreme Court. In *Arizona v. California*, the Court held that Arizona was entitled to 2.8 maf per annum of mainstream water and that its tributaries did not count in that apportionment. The Court further found that all uses of Colorado River water within Arizona, including federal uses and uses by Indian tribes, would be counted against Arizona’s 2.8 maf annual entitlement.
- Colorado River Basin Project Act (CRBPA) - The CRBPA was passed in 1968 and instructed the Secretary to construct the Central Arizona Project, which was to consist of a series of aqueducts and reservoirs to bring water from the Colorado River to central and southern Arizona.

A provision included in the CRBPA states that in times of shortage, California's full 4.4 maf of water and any other prior perfected rights will be delivered water before any water will be provided for the CAP. The Act gives the Secretary the authority to enter into a master repayment agreement with the CAWCD.

- CAP Master Repayment Contract - The Master Repayment contract between the United States and CAWCD provides for the delivery of CAP water and the repayment of reimbursable costs. The contract was signed in December 1972 and was amended in December 1988. The contract establishes the quantity of water available for delivery to CAP as any portion of Arizona's Colorado River entitlement remaining after senior right holders needs are met, less 164,652 af for users along the Colorado River. Those users were given a priority similar to the CAP. It also allows for the recharge of any water that is available but cannot be put to direct use.
- CAP Water Allocations and Reallocations - The Secretary of the Interior is responsible for allocating CAP water supplies. On October 12, 1976, the Secretary made the first allocation of water among the Indian Tribes. On August 5, 1980, a revised Indian allocation proposal was noticed. Then, on January 10, 1983, the Secretary entered a record of decision of his allocation of CAP water to Indian and non-Indian M&I and agricultural users. The record of decision established a priority system whereby Indian and M&I allocations would share priority in times of shortage over agricultural and miscellaneous uses. These allocations were the basis for contracts with Indian tribes and a series of subcontracts with non-Indian water users. Following the period of time for negotiating and signing subcontracts, any water rejected by potential subcontractors was to be reallocated by the Secretary. Independent of the allocation process, additional CAP water has been transferred to several Indian Tribes as a part of Indian water rights settlements approved by Congress.
- USBR Colorado River Priority System - Within Arizona, the relative priorities among Colorado River water uses have been described in recent contracts through the following system:
 - First Priority - Present perfected rights defined and provided for in the Supreme Court decree in *Arizona v. California* having priority dates prior to June 25, 1929.
 - Second and Third Priority - Secretarial reservations and perfected rights established prior to September 30, 1968, but after 1929. Contracts between the U.S. and water users in Arizona established on or prior to September 30, 1968, but after 1929. Second and Third priorities are equal.
 - Fourth Priority - Post 1968 entitlements pursuant to CAP contracts; and, contracts, Secretarial reservations and other arrangements between the U.S. and Arizona water users subsequent to September 30, 1968 not to exceed 164,652 acre feet of diversions per year.
 - Fifth Priority - Contracts for use of unused apportionment water.
 - Sixth Priority - Contracts for surplus water.

Water Banks in Other Western States

In an effort to identify additional opportunities for the water banking program in Arizona, the Study Commission investigated similar institutions in other states. Information was provided by several of the other state banks and additional information came from the publication Water Banks in the West, Natural Resources Law Center, University of Colorado, August 31, 1994.

- Idaho Water Supply Bank - The Idaho Water Supply Bank is a water exchange market operated by the Idaho Water Resource Board. Using the Bank, water users who in any given year have rights to more water than they require, can put the excess stored water or natural flow rights that will not be used in the Bank from which it can be sold or leased to people who do not have enough water to meet their needs. This system helps make excess water available to other users for such things as irrigation or other authorized uses. Water Bank water has also proven valuable by providing stored water for downstream salmon recovery efforts.
- Texas Water Bank - The Texas Water Bank was created by the Texas Legislature as a mechanism to allow for and assist in the voluntary transfer of water rights between willing buyers and sellers. The transfer may be either temporary or permanent, and in most instances, will require a permit modification from the Texas Natural Resource Conservation Commission. The Bank is an element of the Water Supplies Section of the Texas Water Development Board which facilitates the marketing and transfer of water and water rights through the provision of information describing availability and needs for water in the state.
- California Drought Water Bank - The California Drought Water Bank was activated in the drought years of 1991, 1992, and 1994. Since 1991 the program has provided water to 26 urban and agricultural water agencies and for fish and wildlife resources. In 1991, it also provided carryover storage as a hedge against another dry year for the 29 agencies which contract for water through the State Water Project. California's water bank program alleviates harmful economic, social, and environmental impacts related to critical water shortages. It is a voluntary water marketing program. The California Department of Water Resources buys water from willing sellers and transfers the water to buyers under special critical needs allocation rules. The Department of Water Resources administers the Water Bank, but 100 percent of its costs are paid by those participants who buy water from the Water Bank.

Policy Issues, Findings, and Recommendations

The Study Commission spent nearly two years investigating opportunities for the Arizona Water Banking Authority to further enhance water management activities in Arizona. They also gave careful consideration to the possibilities of creating partnerships with authorized entities in Nevada and California. During the course of these investigations a number of issues were identified and thoroughly discussed. Many of the issues are very broad and are of potential concern to numerous interest groups and stakeholders. Other issues are more narrowly focused and may affect a smaller set of stakeholders. The following discussion summarizes the deliberations of Study Commission. The issues and recommendations are generally grouped as they were identified by the five subcommittees, but often the issues overlap.

Findings and Recommendations Regarding the Potential for Shortages to Arizona's Colorado River Supply

The Study Commission determined that the AWBA should use a consistent set of water planning assumptions to evaluate the availability of water supply to meet current and future demands for Colorado River water. These assumptions were inputs to the Colorado River System Simulation (CRSSez) computer model to study the potential future water shortages that may occur to existing municipal and industrial CAP subcontractors and others. The quantification of potential shortages represents the amount of water that will need to be banked to firm long-term water supplies. The output from the computer model also quantifies the potential amount of water that is excess to the projected annual demands and is consequently available for storage purposes. The Study Commission organized its work into two issue areas.

1 *What assumptions should the Arizona Water Banking Authority make with respect to planning and modeling the Colorado River operations?*

The future availability of water from the Colorado River for Arizona is dependent on several key variables. These key variables are summarized as follows:

- Upper Colorado River Basin water demand
- Lake Mead protection levels and shortage strategies
- Surplus declaration strategies
- Water demand reduction - shortage distribution strategy
- Yuma desalter operations

Recommendation

The Study Commission studied numerous iterations of computer model runs

to determine the sensitivity of the key variables to water banking and marketing decisions. Based on the analysis of these studies, the Study Commission recommends that for planning purposes, the AWBA should use the following assumptions:

- The Upper Colorado Basin water demand build-up is recommended to be a maximum of 4.8 million acre feet (maf) without losses. The projected build-up which the Upper Basin terms “anticipated” is listed as 4.6 maf without losses, and the remainder is termed “potential.” The 4.8 maf amount allows for some projected build-up beyond the “anticipated” amount.
- Lake Mead should be operated assuming that a shortage is declared to protect, with an 80% assurance, the current SNWA intake level of 1050 feet. It should also be assumed that the lake level will never be allowed to drop below the level of the new SNWA intake of 1000 feet.
- Assume a surplus strategy of spill avoidance based upon a presumed inflow from the Upper Basin of approximately 17 maf (70th percentile level of historic runoff).
- Assume a shortage year strategy that deliveries to the CAP and other fourth priority water users will be limited to no more than one maf.
- Assume that the Yuma Desalting Plant will be operated, but also investigate the impact to Arizona if the Yuma Desalting Plant is not run.

The recommended assumptions are appropriate for the intended AWBA planning purposes. These assumptions are not, however, necessarily appropriate for other purposes, such as determining Colorado River long-term reservoir operating criteria. Adoption of these assumptions for planning purposes should not be interpreted as an official position of the State of Arizona or the ADWR regarding policies on reservoir operating criteria, development or use of water supplies by any other basin state, or operations of the Yuma Desalting Plant.

2 *How much water should be stored by the Arizona Water Bank to protect against projected shortages?*

One of the purposes of the AWBA is to store water today to protect Arizona M&I water users against water shortages on the Colorado River and disruptions of operations of the CAP in the future. Utilizing the provisions of Arizona’s underground storage and recovery laws, the AWBA may distribute long-term storage credits to make water available to M&I users of Colorado River water that are inside or outside of the CAWCD service area.

The Study Commission discussed the potential need for a backup water supply during times of a CAP shortage. Several options for determining the amount of water needed to protect the M&I users were considered. For those M&I water users inside of

the CAWCD service area, the protected amount might be one of three options.

CATEGORY	AMOUNTS
M&I allocations with adjustments by Indian water rights settlements and Cliff Dam replacement water	676 kaf/yr
M&I allocations plus 113 kaf of water which can be potentially leased from the Indian Communities	789 kaf/yr
Projected M&I demand for CAP water in 2040	838 kaf/yr

Recommendation

If the AWBA provides shortage protection for an annual demand of 676,000 af, an estimated 3,029,000 af of recharge credits must be stored to meet the shortages to the CAP M&I through the year 2100. If the AWBA provides shortage protection for an annual demand of 789,000 af, then an estimated 3,527,000 af of recharge credits must be stored to meet the shortages to the CAP M&I through the year 2100. If the AWBA provides shortage protection for an annual demand of 838,000 af, then an estimated 4,296,000 af of recharge credits needs to be stored to meet the shortages to the CAP M&I through the year 2100.

Other Recommendations

The USBR should adopt criteria for Lower Basin Colorado River reservoir operations that clearly identify the circumstances when shortages will be declared. The criteria should also identify the volume of reduction Arizona fourth priority contractors would expect to take during the initial phase of the shortage reduction. The policy for determining shortage criteria must be developed in consultation with representatives of the basin states.

The USBR should also adopt a procedure for determining how shortages to Arizona fourth priority contractors will be shared between CAP contractors and non-CAP contractors. Before establishing this procedure, the USBR should request that the parties negotiate a mutually agreeable reduction sharing agreement.

Finally, the USBR should clarify the method that will be used for determining how reduced deliveries to the CAP will be shared between M&I priority subcontractors and Indian priority contractors. The clarification must definitively rectify apparent conflicts between several contracts with Indian tribes and the 1983 record of decision issued by Secretary of the Interior James Watt.

□ **Findings and Recommendations Regarding Funding for the AWBA and the Taxing Mechanism**

The Study Commission investigated the funding mechanisms available to the AWBA under its current statutory authorities. AWBA staff prepared preliminary projections of the revenues expected from these sources, and compared those revenues with the potential needs to accomplish currently authorized purposes. These projections indicate that generation of revenue will limit the volume of water banked over the twenty-year period that the current revenue sources are in effect. The one exception to this general finding is that the four-cent *ad valorem* tax in Maricopa County may provide more money than is required for the purpose of providing shortage protection to CAP M&I subcontractors within that county. Especially critical is the continuation of adequate appropriations from the state general fund since that revenue source can be used for the most purposes and is the most flexible.

The Study Commission considered three issues related to funding mechanisms.

- 1** *Is the mechanism for the tax collected pursuant to A.R.S. §48-3715.02. (four cent ad valorem tax in Maricopa, Pinal, and Pima Counties) satisfactory? Should this tax provision be continued as currently drafted or should it be modified?*

In establishing the Arizona Water Banking Authority Study Commission, the Legislature described four areas to be studied. One of the areas specifically identified was to make recommendations for continuation or modification of the tax collected pursuant to A.R.S. §48-3715.02. A.R.S. §48-3715.02 is a statutory reference located within Title 48, Chapter 22, which describes the authority and purpose of multi county water conservation districts. The Central Arizona Water Conservation District is the only district that has ever been established pursuant to these statutes.

The Arizona Water Banking Authority staff estimates that the revenues from the four-cent property tax will account for over 50 percent of its funding and should total nearly seven million dollars per year. Clearly, if the tax were not levied by the CAWCD board or the board determines that the revenues were needed for CAWCD purposes, the water banking program would have to be scaled back significantly. The Study Commission discussed these risks, but concludes that the current method of levying the tax and transferring the funds to the Banking Fund is appropriate and does not need modification.

The decision on whether or not to levy the tax and how much of the four cents should be levied rests entirely with the board of directors of the CAWCD. Some may question the desire of an elected board to levy a tax assessment that the CAWCD must then transfer to another government entity. Normally this approach could be perceived to be risky because the CAWCD board may not be motivated to assess taxes where the

District is not directly responsible for the oversight of the expenditures. However, the Study Commission does not believe that the risk is high in this case because the statute limits the expenditure of the four-cent tax to purchasing water for storage to protect CAP M&I subcontractors against future shortages or emergency outages. Since the funds can only be spent in this manner, the money will come back to CAWCD in the form of payment for water purchase. Furthermore, the president of the CAWCD board of directors is an AWBA commissioner and therefore has a vote on how the tax revenue will be spent.

If the CAWCD decides to retain the four-cent revenue for payment of expenses, funding for water banking activities would be severely curtailed. The Study Commission does not believe that it is likely that CAWCD will vote to keep the revenue, but if it does, it will probably be used to avoid a rapid rate increase to CAP water users. This “rate shock” effect will be difficult for customers to respond to quickly, and could result in a corresponding decrease in water orders as water users choose to use other, less expensive water sources, such as groundwater. If this type of circumstance were to arise, the Study Commission believes that it would be more appropriate to use the four-cent tax revenue to cushion the rate shock and allow continuation of direct use orders rather than to use the revenue for water banking purposes.

Recommendation

The Study Commission has reviewed the provisions of §48-3715.02. The Study Commission finds that the current mechanism which requires the tax to be levied by the CAWCD but revenues spent by the AWBA has worked well to date. While there is some risk that the AWBA program could be disrupted if the CAWCD would choose not to levy the tax, that risk is probably small. The Study Commission also believes that an appropriate tradeoff will be made if the CAWCD votes to retain the tax revenue, since the funds would be used to enhance direct delivery of CAP water, which should have a priority over water banking activities. The Study Commission recommends that the current provisions of §48-3715.02 be continued without modification.

- 2** *How should Arizona water management objectives be considered in developing programs for interstate water banking on behalf of Nevada or California? In particular, in establishing the charges for interstate banking services, should the AWBA require out of state entities to participate in storage and recovery options that are most compatible with Arizona’s groundwater management objectives, even if those options are more costly?*

Recommendation

The AWBA will recharge and recover water at specific sites for a broad range of water management objectives. Interstate water storage agreements for recharge

and recovery should not necessarily reflect the lowest cost options for the participating states. Those agreements should recognize the need to meet Arizona's groundwater management objectives, including provisions relating to management plans, set forth in A.R.S. §§45-401 through 45-704 (Groundwater Code) and rules, regulations, and policy guidelines adopted thereto. The cost of storage and recovery as established under A.R.S. §45-2471.C should reflect these opportunities as well as the public policy and general purposes of the Water Banking Authority as set forth in sections 45-2401.F.1 through 45-2401.F.5. Finally, the cost should take into account the individual water management priorities of different localities around Arizona.

- 3** *Interstate water banking parties will be required to make "payment in lieu of taxes" since those parties do not pay Arizona property taxes. How should the appropriate amount of in lieu tax be determined?*

Recommendation

When dealing with in lieu tax charges for interstate banking activities, it is infeasible to base those charges on the equivalent assessed value of communities in Nevada or California. The Study Commission believes that a fair equivalency can be derived by determining the amount of *ad valorem* tax paid per acre foot by non-Indian M&I and agricultural water users in the three county CAP service area. Due to natural fluctuations in deliveries, the tax collection should be compared to the average delivery over the previous three years. The resulting dollars per acre foot value should be used to assess the in lieu tax. The Study Commission recommends that A.R.S. §48-3715 be amended to reflect this approach. (See Appendix for proposed amendment)

Other Recommendations

The Study Commission finds that the funding provided annually by the Legislature through appropriations from the general fund is critically important to success of the AWBA program. This funding source is the primary mechanism for the AWBA to participate in Indian water rights settlements and to meet the drought protection needs of Colorado River M&I water users located outside of the tri-county CAP service area. The Study Commission urges the Legislature to continue to provide adequate funding to the AWBA program, including the potential for increased levels of funding in the future.

□ Issues Related to Opportunities to Enhance Intrastate and Interstate Water Banking Activities.

The Study Commission determined that a number of opportunities may exist for the AWBA to perform additional services that could help Arizona water users meet their needs for a reliable water supply. It also recognized that the banking program for interstate purposes could potentially be expanded in a variety of ways. The Study Commission identified three primary issue areas.

- 1** *Arizona and the United States Bureau of Reclamation should develop a policy and process for transferring or leasing entitlements between parties in Arizona (including transfers with Indian tribes). The policy should consider temporary and permanent agricultural land fallowing and marketing of water that is made available through Indian water rights and contracts.*

Water transfer issues, especially transfers from rural areas to urban areas, have been controversial in Arizona. In the 1980s, several urban municipal providers sought to augment their water supplies by purchasing rights to groundwater in rural basins. After several years of discussion and debate, the Arizona Legislature enacted laws prohibiting future groundwater transfers from most of the State's basins.

Even though many of the same issues that arose in the groundwater transfer controversy may also exist with transfers of entitlements to Colorado River water, several transfers and leases have been completed in recent years. Water transfers and leases are directly overseen by the United States Bureau of Reclamation because of its responsibility to administer water contracts for Colorado River water on behalf of the Secretary of the Interior. Historically, the USBR has looked to the State, acting through the ADWR, to provide policy advice on whether the proposed transfer is in the public interest.

ADWR has developed policy statements for the transfer of CAP water from exchange contractors and for the relinquishment and transfer of CAP contracts within the CAP service area. ADWR has not developed a policy on the general transfer or lease of Colorado River water entitlements. Though not directly required by statute, an ADWR policy on transfers and leases of Colorado River water rights would help establish the terms under which such a transaction would be viewed favorably.

The Study Commission identified a number of opportunities for the AWBA to provide assistance in helping meet the future water needs of Arizona water users. While much of the demand for water is in central Arizona, most of the higher seniority water rights are

located along the Colorado River. Therefore, transferring and transporting non-CAP water through the CAP may be an important component in solving future water supply problems.

Recommendation

Before the AWBA or other private parties attempt further transfers involving Colorado River water, it would be very beneficial for the state and federal agencies to identify and establish policies and procedures regarding transfers. Additionally, since much of the demand for water is in central Arizona and most of the higher seniority water rights are located along the Colorado River, a policy for transporting non-project water through the Central Arizona Project aqueduct system should be developed concurrently. These policies must be created in a coordinated manner by ADWR, USBR, CAWCD and AWBA. The Study Commission recommends that those agencies develop appropriate policies and procedures so transfer activity may proceed in a timely manner. With the policies established it will be possible to determine what role, if any, the AWBA can constructively play in water marketing activities.

The Study Commission recommends that the government agencies initiate an open public process to obtain input in developing the policy. The general sense of the Study Commission is that the transfer policy should be flexible and should not create bureaucratic hurdles which must be overcome before a market transaction can be accomplished. Water transfers should be between willing sellers (and leasers) and willing buyers and never accomplished through condemnation. The policy should also give full consideration for regional and local economic, social, or environmental impacts which may occur when transfers are based on the retirement or fallowing of agricultural land. The transfer policy should allow for creative approaches to minimize or mitigate impacts. It may also be advisable to provide minimum acceptable standards as an alternative.

2 *Should the benefits and services provided by the AWBA be expanded? If so, which services are most appropriate?*

The AWBA is currently authorized to provide four primary services: 1) protect M&I uses of Colorado River water against droughts or other shortages by providing a backup supply; 2) enhance water management objectives of the state; 3) assist in the settlement of Indian water rights claims; and 4) assist water users in California and Nevada in meeting their future water supply needs. If authorized, the AWBA may be able to provide several additional benefits and services.

The Study Commission identified and discussed the following types of services:

- Short term or interim supply services
 - Expanded drought and shortage protection
 - Nonpermanent uses
 - Interim supplies
- Long-term or 100-year assured water supply services
 - Long term credit averaging
 - Water supply supplementation
 - Water transfers and CAP allocations

Recommendations

The Study Commission was impressed by the opportunities that may be available for the AWBA to augment water supplies using banking mechanisms. There undoubtedly is a need both now and in the future for short term and long term water supply services. Using water banking to create a pool of credits to be averaged or to fill in when low priority CAP allocations are unavailable will probably prove feasible and should be considered in the future. Unfortunately, there are too many uncertainties surrounding the financing of supply augmentation services. Therefore, the Study Commission does not believe that the AWBA should be granted the authority to undertake these enterprises at the present time.

The Study Commission does recommend that the powers and duties of the AWBA be expanded to allow the “loaning” of long term storage credits that have been previously earned for authorized purposes. Over the twenty-year period that the AWBA will collect the majority of its authorized funding, it is anticipated that several million acre feet of long term storage credits will be earned. Most of those credits will not need to be recovered for many years or even decades. The Study Commission believes that a public policy benefit would be accomplished if some of these credits could be loaned to entities who may need supplemental or interim water supplies. The credits should be subject to full replacement. The borrower could either repay the AWBA with similar long term storage credits, or must pay the full cost of replacement. The AWBA must establish policies and procedures regarding how it would administer the “loaning” function. Implementation of this recommendation will require authorizing legislation. (See Appendix for proposed amendment)

The Study Commission also recommends that the drought protection service provided by the AWBA be expanded. If the primary objective of protecting against CAP M&I shortages can be accomplished within available revenues, remaining

revenues could be used to secure additional credits to protect against shortages to M&I water providers who rely on other surface water supplies. Studies indicate that this situation may exist within Maricopa County. The credits will be made available to eligible providers experiencing surface water shortages in proportion to the amount of *ad valorem* taxes paid by taxpayers within the boundaries of the portion of the service area experiencing the shortage. Implementation of this recommendation will require authorizing legislation. (See Appendix for proposed amendment)

3 *Should the AWBA be authorized to meet future needs for water supply by using techniques other than the long-term storage credit system?*

The AWBA is currently authorized to provide a variety of services by recharging excess Colorado River water delivered through the CAP. Clearly, this banking approach must be considered a high priority considering the current availability of unused CAP water and the capacity of the CAP aqueduct system to deliver this water. The use of excess water results in a viable way to supplement Arizona's long-term supplies. Water banks in other states provide a variety of other examples of other banking techniques. The Study Commission has identified four additional banking mechanisms that may have potential use in Arizona, including:

- Storage of other water supplies in addition to excess Colorado River water
- Water storage in surface reservoirs
- Land fallowing of senior rights
- Return flow credit development

Recommendation

The Study Commission believes that many of the concepts identified while discussing this issue have merit and may be worthy additions to the AWBA powers at some time in the future. However, at the present time, there is too much uncertainty regarding how these techniques would be implemented.

The Study Commission does recommend that the AWBA be authorized to earn long term storage credits by purchasing effluent, but only to the extent such an action is compatible with its primary objective of using excess Colorado River water delivered through the CAP. Legislative authorization will be required to implement this recommendation. (See Appendix for proposed amendment)

□ Issues Related to Opportunities for the Arizona Water Banking Authority to Provide Additional Benefits at Locations Outside of the Tri-county CAP Service Area.

The Study Commission recognized that most of the water management benefits authorized by H.B. 2494 will occur within the CAP service area in Maricopa, Pinal, and Pima Counties. The Study Commission felt that there may be significant opportunities for other portions of the State to also benefit from water banking activities. The fast-growing communities in Mohave County were particularly identified as places where the AWBA may provide a significant benefit. Some of the issues discussed by the Study Commission are related to providing clarification how the AWBA can utilize its existing authorities while other look at additional opportunities.

The Study Commission identified seven primary issue areas.

- 1** *Determine the frequency and magnitude of potential shortages to Colorado River area M&I water users who are not Central Arizona Project subcontractors.*

The Study Commission reviewed computer modeling studies performed by ADWR staff that identified potential shortages through the year 2100. These studies also identified a number of uncertainties on the method which may be employed to distribute shortages among various water users. Depending on the shortage sharing methods, the 100-year cumulative shortage to Colorado River area M&I water users could be as low as only 21,000 af or as high as 779,000 af.

Recommendations

The Study Commission believes that providing adequate shortage protection for Colorado River area M&I water users is critical. Water providers located along the Colorado River corridor generally lack a backup supply because water withdrawn from wells within the flood plain aquifer is generally considered river water rather than groundwater. Therefore, when shortage conditions exist, these providers will be faced with extremely damaging water supply reductions. The Study Commission concluded that predicting the frequency and magnitude of these potential shortages is very difficult at the present time, but recommends that the AWBA adopt a conservative set of assumptions for planning purposes. Using these conservative assumptions, the Study Commission's investigations indicate that about 575,000 af of long term storage credits should be reserved by the AWBA for river area M&I water providers.

The USBR should clarify the method that will be used for determining how reduced deliveries to non-CAP fourth priority contractors will be shared between M&I and agricultural contractors. The Bureau should seek the input of all contractors within this category in establishing the method.

- 2** *Should the AWBA be empowered to obtain and then provide water supplies to new water providers or to supplement the supplies and allocations of existing providers in areas located outside of the CAP service area?*

Water providers along the Colorado River have expressed concerns that their current level of water allocation will be inadequate to accommodate all of the anticipated growth. The Mohave County Water Authority was formed to address the need for supplemental water supplies.

Quantifying the need for supplemental supplies is difficult and subject to a variety of assumptions. One common method includes use of census figures to project future population. Those figures are then multiplied by a gallons per person per day rate. Other methods factor in land use patterns and zoning to estimate an ultimate water need.

ADWR developed information regarding current water allocations and projected future needs for water providers located along the Colorado River. The ADWR study indicates that only Lake Havasu City, of the large municipal providers, is likely to exceed its contract amounts by the year 2040, although many may be using a large portion of their allocations. ADWR acknowledges that the data base used for these estimates would benefit from additional information and will continue to work with river area communities and the Mohave County Water Authority to refine its estimates.

Recommendation

The Study Commission believes that M&I water supply augmentation for the fast-growing areas along the Colorado River corridor may be an appropriate additional role for the AWBA. Because of the location of the communities, most, if not all, water withdrawn or diverted will be considered Colorado River water. Fourth priority supplies of Colorado River water available for allocation along the Colorado River are limited to 164,652 af, and all but a few thousand acre feet have been allocated. It may, therefore, be difficult for new water providers to be established or for existing providers to obtain additional allocations.

While these problems are recognized, the Study Commission concluded that it is inappropriate, or at least premature, to give the AWBA the responsibility for supply augmentation if there will not be a need for such service for several decades. As explained in a previous recommendation relating to short and long term supply

augmentation, there are too many uncertainties regarding augmentation techniques and financing for the AWBA to add this function at the present time. However, if the AWBA is granted the authority to “loan” long term storage credits as has been recommended by the Study Commission, some of the needs for supplemental water for river area communities can be addressed.

3 *Should the AWBA be empowered to store water at recharge sites that do not have direct access to the Central Arizona Project?*

The AWBA’s enabling legislation limits the AWBA to banking water that will be delivered through the CAP. The legislation does not allow the AWBA to independently own, develop, operate or construct storage facilities. The limitation that water delivered to a storage site must be transported through the CAP means that all water must be stored either in western Arizona along the aqueduct route or at a facility within the CAP service area. In order to recover the water for the benefit of water users outside of the CAP service area, an exchange and forbearance mechanism must be established with CAP water users. If the AWBA could store water at a site near the Colorado River, it may be possible to deliver water to water users without requiring exchange and forbearance agreements.

Two proposals were developed for discussion purposes: recharge to increase Colorado River return flows, and recharge and capture. The feasibility of the proposals is dependent upon favorable site-specific hydro-geologic conditions.

Recommendation

Storing water along the Colorado River may have advantages if the recovered water could be delivered without negatively impacting other Arizona water users’ rights to divert Colorado River water. If water is stored in the flood plain aquifer for too long, that water will be lost to the Colorado River. Therefore, water storage must either be for short periods of time or else should not be initiated until much closer to the time frame when it would need to be recovered. Of the two storage methods identified by the Study Commission, it appears that the recharge and capture method is more practical and thus worthy of further investigation and study. The Study Commission recommends that this issue be deferred for further investigation. Once the USBR has clarified what portion of the flood plain aquifers are considered to legally be Colorado River water, it can be determined if any practical water recharge sites exist.

- 4** *Identify the needs and opportunities for the AWBA to provide assistance for supply augmentation or drought protection for M&I water users who are neither located within the CAP service area nor located along the Colorado River.*

Growth is occurring throughout Arizona and there is an identified need for water supply augmentation in several areas that do not have direct access to the CAP or the Colorado River. Communities that may have ample long-term supplies may find that a local shortage could occur in times of drought. Another potential for water supply shortfalls could result from the ultimate determination of water rights through the adjudication process. The AWBA could be a supply source for obtaining substitute supplies by serving as a statewide water augmentation agency. One critical difficulty in attempting to develop water supplies for users who lack access to the CAP or the Colorado River is the feasibility of implementing water exchanges on in-state river systems.

Recommendation

At present, there are too many obstacles to delivering water to many rural municipalities to recommend that the powers and duties of the AWBA be expanded to include more geographic regions of the state.

It is not currently feasible to implement water exchanges within certain in-state river systems. However, this does not mean that rural community problems should not be addressed.

The Study Commission recommends that this issue be given further consideration the AWBA and ADWR. It is recommended that the agencies work directly with any interested community and also with the representatives of the Arizona Rural Water Association. The agencies should address the following issues:

- Study population and growth trends of the rural counties in Arizona. ADWR and other governmental entities may be able to provide direct assistance.**
- Analyze conditions throughout the state to determine which regions would be likely to suffer the greatest impact if drought conditions were to arise. These areas should be categorized and prioritized for further study for exchange scenarios or infrastructure development.**
- Continue to work with the Bureau of Reclamation and the U.S. Fish and Wildlife Service to examine if water exchanges create impacts to endangered species.**

- 5** *Should the AWBA be empowered to provide water supply assistance for non-M&I uses within Arizona such as environmental enhancement projects?*

As use of water within Arizona increases, the competition for remaining supply also increases. The discussion of how banking mechanisms could be used to supply water for uses other than M&I focused on two examples. First, water may be needed for environmental enhancement or endangered species mitigation programs. Second, the federal government may need to obtain a replacement supply for the brine stream that is associated with the operation of the Yuma Desalting Plant. The Bureau of Reclamation has indicated interest in using the AWBA as a partial solution to issues associated with operating the Yuma Plant.

Recommendation

The Study Commission believes that this issue merits consideration but does not have a specific recommendation at this time. Future activities should involve further identification of potential environmental projects that could benefit from AWBA services. The AWBA should consult directly with the USBR regarding the range of interest that the federal government may have in using the water banking program to meet its short or long term needs. Also, the proposed credit “loan” program, if authorized, will be available to non-M&I water uses throughout the State.

- 6** *Study and determine the mechanisms for forbearance and exchange which may be used to deliver Water Bank-developed supplies to water users outside of the CAP service area.*

The AWBA is currently authorized to store water on behalf of Colorado River M&I contractors outside of the CAP service area. However, storage of water must occur as a result of transportation through the CAP. When the stored water is recovered, it must be made available to the water users located in the Colorado River area. It is highly unlikely that the water will be directly transported from central Arizona groundwater basins back to the Colorado River area communities.

Recommendation

The Study Commission investigated several methods that would create the legal mechanism for the recovery and delivery of banked water to river area communities. The Study Commission recommends that the AWBA, the CAWCD, and the affected communities enter into exchange agreements and file notice of those agreements with ADWR as provided by current state law. Under Arizona water laws, the exchange mechanism allows a trade of water supplies without the

requirement for additional water allocations or contracts. Under this mechanism, the AWBA would transfer the long term storage credits to the river area community. The river community will arrange for the recovery of the banked water and the delivery of that water to the CAWCD or one of its customers. The CAWCD would then arrange a trade of its Colorado River water by allowing it to be diverted by the river area community. While the Study Commission believes that the described exchange mechanism is the best option available and can be accomplished without additional legislative authorization, it recognizes the role of the Bureau of Reclamation in administering contracts for water delivery in the Lower Colorado River. The Study Commission urges the AWBA, with the assistance of ADWR and CAWCD to initiate discussions with the USBR to determine what, if any, impediments may exist to executing an exchange agreement.

- 7 *Should M&I water users located outside of the CAWCD service area who receive credits from the AWBA to offset a water shortage be required to pay to have those credits replaced? Should the reimbursement rate be equal to what the AWBA originally paid for the credits or should it be at the rate in effect at the time the purchase of replacement water is needed?*

Arizona Revised Statutes (A.R.S.) § 45-2457.B establishes the mechanism for M&I users outside of the CAWCD service area to take advantage of the AWBA to firm their supplies against the potential of shortage. First, the statute requires the AWBA to reserve a reasonable number of long-term storage credits accrued with the general fund appropriation for the benefit of those users. The AWBA is then instructed to distribute those credits back to those users when the water users need the water to offset a shortage. The AWBA collects reimbursement equal to the AWBA's cost of replacing the distributed long-term storage credits. (Similar requirements exist for use of general fund credits used for M&I shortages within the CAWCD service area.)

Discussion of this issue by the Study Commission focused on the need to amend the statutory language to make it clear that the reimbursement of funds would not be needed in the same year water was being withdrawn from the Water Bank. If a Colorado River shortage was taking place, it would obviously be very difficult, and therefore very expensive for the AWBA to obtain a replacement supply. Mohave County representatives would like the statute clarified to show that the intent of the reimbursement provision is that the AWBA should wait until alternative sources are more readily available before obtaining a replacement.

Recommendation

The Study Commission concluded that A.R.S. § 4524.57.B is ambiguous and should be amended to clarify that additional sources of water need not be purchased

in the same year as when the supplies are withdrawn. (See Appendix for proposed amendment) The Study Commission also recommends that the concept of replacement of the credits, as required by current law, be continued. This mechanism creates a permanent source of water for drought protection. The Study Commission believes that this benefit is far more important than the mere repayment of money to the general fund.

❑ Issues Related to Opportunities for Arizona Indian Communities to Participate in or Benefit from Arizona Water Banking Authority Activities.

Identification of appropriate opportunities that will allow Arizona's Indian communities to more fully participate in water banking activities was one of the primary areas for consideration by the Study Commission. The Study Commission was also very interested in identifying ways the AWBA can assist in the settlement of Indian water rights claims, which is an existing function of the AWBA.

The Study Commission adopted an approach of working with individual Indian Communities to identify problems and needs that could be solved with water banking programs. The Study Commission found that meetings with the tribes were rewarding, and a great deal of information was exchanged. It urges representatives of the AWBA to continue this practice by holding similar meetings in the future.

The Study Commission organized its work effort around four issue statements.

1 *What are the respective water rights and supplies of the Arizona Indian tribes and how will they interact with the AWBA?*

While no two tribes have identical circumstances, the Study Commission found that several of the tribes may share common issues or opportunities to interact with the AWBA. The tribes were consequently categorized as follows:

- Tribes with a CAP allocation and an implemented water rights settlement
 - Ak Chin Indian Community, Fort McDowell Indian Community, Salt River Pima-Maricopa Indian Community, and Yavapai-Prescott Indian Tribe
- Tribes with a CAP allocation and full or partially negotiated water rights settlements not yet implemented
 - San Carlos Apache Tribe and the Tohono O'odham Nation
- Tribes with CAP allocation but no water rights settlement
 - Gila River Indian Community, Pasqua Yaqui Tribe, Tonto Apache Tribe, and the Yavapai-Apache Nation

- Tribes with adjudicated water rights but no CAP allocation
 - Cocopah Tribe, Colorado River Indian Tribes, Fort Mohave Indian Tribe, and the Fort Yuma-Quechan Tribe
- Tribes without adjudicated water rights, settlements or CAP allocations
 - Havasupai Tribe, Hopi Tribe, Hualapai Tribe, Kaibab-Paiute Tribe, Navajo Nation, San Juan Southern Paiute Tribe, White Mountain Apache Tribe, and the Pueblo of Zuni

Recommendation

The Study Commission's investigations revealed a wide range interest regarding Indian water rights issues. Indian tribes and communities have very different individual situations in terms of their claims to water, geographic locations, infrastructure, and water use needs. The Study Commission recommends that ADWR provide periodic updates to the AWBA regarding the status of Indian water rights settlement negotiations and progress on Indian related issues coming out of the ongoing adjudication process.

2 *How can the AWBA assist in achieving implementation of Indian water rights settlements?*

The Study Commission discussed this issue extensively and found a number of feasible techniques that the AWBA may employ to assist in implementing water rights settlements. The techniques include:

- Provide a partial water supply including:
 - Shortage protection
 - Storage accounts
 - Supplementing other supplies
 - Use of alternate sources of water for use on the reservation
- Mitigate impacts of off-reservation groundwater overdraft
- On-reservation storage techniques

Recommendations

The Study Commission concluded that, without question, water storage and recovery techniques performed by the AWBA can and should be an important component in Indian water rights settlements. However, any involvement by the AWBA should be undertaken on a settlement by settlement basis. All of the techniques listed above were felt to have great potential in assisting in new water rights settlements. The Study Commission especially emphasized that wherever possible and hydrologically feasible, underground storage at facilities located on a

reservation should be utilized.

The Study Commission also recommends that the Legislature continue to provide general fund appropriations to the AWBA since that revenue source will be the primary mechanism for Water Bank participation in Indian water rights settlements. As settlements negotiations are concluded, the amount of AWBA participation, and thus the requirements for future funding will be better known.

3 *How can the AWBA provide additional water supplies or marketing services to Indian communities?*

The Study Commission identified a number of potential interactions between the AWBA and Indian communities which may be mutually beneficial but are not directly related to an Indian water rights settlement. Generally, these activities involve the AWBA providing water storage services for a tribe or the purchase of water by the AWBA from the tribe. Additional legislative authorization would be needed before these types of activities could be initiated. The four techniques identified are:

- Store unused Indian water for the tribe's benefit at off-reservation locations
- Purchase water from Indian tribes as a supply source for recharge
- Serve as an intermediary or facilitator in marketing Indian water to non-Indian water users
- Arrange land following agreements

Recommendation

Discussion of this issue was one of the primary tasks for investigation by the Study Commission listed in H.B. 2494 and therefore it was given a great deal of consideration. As with studies dealing with non-Indian related marketing issues, the Study Commission found that it would be premature to involve the AWBA in direct marketing projects such as land following agreements or the direct leasing of Indian water supplies for recharge purposes. However, the Study Commission did strongly recommend that provisions be made to allow the AWBA to provide water banking services to Indian communities and others.

The Study Commission found that there is a high degree of uncertainty and controversy about the legal authority of Indian tribes to market their water supplies for off-reservation use. Therefore, it would not be prudent to involve the AWBA directly in an activity that may be the subject of future litigation. What the Study Commission does agree is reasonable and timely would be for the AWBA to provide a service to Indian communities, upon request and at the beneficiary's complete expense, by facilitating banking activities on the community's behalf. Since the

AWBA is in the business of obtaining permits, arranging for banking partners, arranging for recovery opportunities and the other tasks required to run a water bank, it is presumed that they will be able to perform these tasks more expeditiously than an entity attempting to do so on its own behalf. The Study Commission felt that this service may be especially beneficial to Indian communities that do not regularly involve themselves in state government-based permitting processes. The AWBA would only be able to provide this type of service if an entity was otherwise eligible to obtain a permit themselves. To the extent that there is a question about the right of an Indian community to market their water for off reservation use, it would be the community's responsibility to show it has the legal authority to do so, not AWBA's. Also, to the extent credits earned on the Indian community's behalf are to be assigned to another party for later recovery, it would be the community's responsibility to find a buyer, not the AWBA's. In summary, if the Indian community could perform the banking activity itself, then the AWBA would be authorized to provide the banking service; but if for any reason the community would not be able to perform the banking itself, then the AWBA would likewise not be able to provide the service.

The AWBA is not currently authorized to enter into services agreements like those the Study Commission is recommending. Legislation will be required and draft language has been proposed. (See Appendix for proposed amendment) While the genesis of the service agreement concept dealt with assistance to Indian communities, the Study Commission believes that, to the extent non-Indian parties may also want to enter into such agreements, they should also be provided the opportunity to do so.

4 *What are some of the challenges facing Indian community participation in AWBA activities?*

The Study Commission identified variety of legal, institutional, physical, and cultural challenges which may impede Indian tribes from partnering with the AWBA. Many of these challenges were identified through the fact-finding meetings the Study Commission held with tribal council representatives. These challenges include:

- Lack of delivery infrastructure or exchange capability
- Difficulty for the AWBA to participate in settlement discussions
- Funding limitations
- Legal and policy questions about marketing
- Low demands for short-term water supplies
- Wheeling agreements through the CAP
- Sovereignty, trust, and regulatory issues

- Federal participation

Recommendation

The Study Commission concluded that numerous difficult challenges confront meaningful Indian community participation in water banking activities. The Study Commission recommends that the legal questions about marketing of Indian water be explored in more detail. The Study Commission fully appreciates that the problems associated with Indian sovereignty, trust, and regulation may be very difficult to overcome. However, many of these problems can be overcome if communication between Indian communities and the State's water interests can be improved. The Study Commission recommends that the AWBA and ADWR keep Indian communities informed and involved in future water banking activities.

Long Range Planning and Administrative Issues

The Study Commission was convinced there is a high probability that the AWBA program will become a key component in the Arizona water management program both now and in the future. As the AWBA moves forward in carrying out its current mission and the new responsibilities recommended by the Study Commission, there was concern that competing priorities will become a problem. The Study Commission believes that the AWBA must have adequate staff support to perform its various functions in a timely manner.

Recommendations

The Study Commission believes that the mission of the AWBA will undoubtedly be critical to the future water management program in Arizona. It also recognized that the mission will be performed over a number of years and therefore the AWBA should develop its annual operating plans with the "big picture" in mind. The Study Commission recommends that the AWBA prepare and annually update a long range plan that looks out at least ten years. The plan should be published in the AWBA Annual Report. This long range plan should address the projected needs for water banking services and establish goals for the amount of water that will need to be banked. To the extent necessary, the AWBA should establish banking priorities when adopting the plan. Statutory provisions that describe the annual operating plan content will need to be amended to include the long range planning component. (See Appendix for proposed amendment)

The Study Commission found that the current administration of the AWBA, which depends upon support services from ADWR and CAWCD, is both effective and cost efficient. However, with the potential increased demands on the AWBA as its mission increases to include interstate banking agreements, water banking service agreements, establishment of a loan program, and long range plan preparation, there is potential for a significant increase in workload. The Study Commission recommends that ADWR and CAWCD monitor this workload and prepare their annual budget requests to the AWBA to ensure adequate staffing.

The Study Commission believes that the process set forth by the Legislature of establishing a separate advisory group to evaluate water banking opportunities and performance has been a successful and valuable experience. However, the Study Commission does not feel it is necessary to extend its life or become a permanent body. The Study Commission does recommend that the AWBA be given the power to appoint technical or other types of advisory committees when it feels it may be appropriate to do so. Statutory authority to appoint advisory committees should be explicit. (See Appendix for proposed amendment)

Summary

The Arizona Water Banking Authority Study Commission was created by the Arizona Legislature in 1996 through the enactment of House Bill 2494. The Study Commission is ancillary to the Arizona Water Banking Authority which was created by the same legislation. The Study Commission was composed of fourteen members including the five members of the AWBA and nine members appointed by the Director of the Department of Water Resources. The Study Commission met regularly either as a full committee or through one of five working subcommittees from September 1996 to November 1998. All meetings were open to the public and a public outreach program was also developed. The Study Commission published an Interim Report of its progress in November 1997.

The Study Commission spent several months acquainting itself with a variety of issues and background information. Briefings were conducted on the current responsibilities of the AWBA, laws and relevant contract provisions pertaining to the Colorado River and the CAP, and the organization, management, and purposes of water banks in other western states.

The Study Commission has developed a number of recommendations regarding the following primary sets of issues:

- Findings and recommendations regarding the potential for shortages to Arizona's Colorado River supply
- Findings and recommendations regarding funding for the AWBA and the taxing mechanism described in A.R.S. §45-3715.02.
- Issues related to opportunities to enhance intrastate and interstate water banking activities.
- Issues related to opportunities for the AWBA to provide additional benefits at locations within Arizona that are outside of the CAP service area.
- Issues related to opportunities for Arizona Indian communities to participate or benefit from AWBA activities.
- Long range planning and administrative issues.

In each of these areas specific recommendations were made. Some of the recommendations were targeted toward government agencies including the Arizona Department of Water Resources, the Central Arizona Water Conservation District, or the U.S. Bureau of Reclamation. Other recommendations were advisory to the Arizona Water Banking Authority. Still other recommendations are to the Legislature in the form of suggested statutory amendments to clarify or enhance the existing powers and duties of the AWBA.

The highlights of the advisory recommendations include:

- The AWBA should reserve between 3 million and 4.3 million acre feet of long term storage credits to protect against future CAP M&I shortages. They should also reserve about 575,000 acre feet for shortages to M&I users who are located outside of the CAP service area.
- The USBR should clarify a number of issues regarding when Colorado River shortages will be declared and how those shortages will be shared within Arizona.
- No changes should be made to the tax mechanism described in A.R. S. §48-3715.02.
- The AWBA should give full consideration to Arizona water management objectives when establishing a plan for interstate banking.
- The ADWR, USBR, CAWCD, and AWBA should initiate an open public process to develop a policy regarding the transfer or assignment of Colorado River contract entitlements.
- The AWBA should continue to study and evaluate opportunities to extend water banking program benefits to areas outside of the tri-county CAP service area.
- The AWBA, CAWCD, and affected river area communities should develop water exchange agreements consistent with current state law to facilitate the recovery and delivery of water banked on those communities' behalf.
- The AWBA should continue to be involved in Indian water rights settlements. Opportunities to utilize storage facilities located on reservations should be encouraged.
- The Legislature should continue to provide general fund appropriations sufficient to allow the AWBA to participate meaningfully in Indian water rights settlements.

The highlights of the proposed legislative amendments include:

- Additions to the powers and duties of the AWBA found in §45-2423 to allow it to
 - Perform water banking services for others
 - Store effluent under certain conditions and circumstances
 - Form advisory committees as needed.
- Additions to §45-2426 that require that the annual plan of operation include a ten-year long range planning component.
- Create a new §45-2455.01 that describes the terms and conditions of water banking service agreements.
- Clarification to §45-2457 that the AWBA does not need to replace storage credits that were redeemed for drought protection purposes that were obtained through general fund appropriations in the same year that the credits were transferred.

- Additions to §45-2457 that would allow under limited circumstances for the AWBA to provide drought protection service to M&I water users who rely on surface water supplies other than CAP subcontracts.
- Clarification to §45-3715 on the method to be used to calculate the appropriate amount of fee in lieu of taxes that need to be collected from those water users who are not exempted from such a fee.

Appendix

Proposed Legislation

REFERENCE TITLE:

State of Arizona
(Chamber of Origin)
Forty-fourth Legislature
First Regular Session
1999

_. B. _____

Introduced by _____

AN ACT

AMENDING TITLE 45, CHAPTER 14, ARIZONA REVISED STATUTES, TO ALLOW THE ARIZONA WATER BANKING AUTHORITY TO FACILITATE WATER STORAGE IN ARIZONA.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 45-2401, Arizona Revised Statutes, is amended to read:
3 45-2401. Declaration of policy and purpose

4 A. The legislature finds that this state is currently and temporarily underutilizing both the
5 entitlement to Colorado river water confirmed to it by the United States supreme court in
6 Arizona v. California, 373 U.S. 546 (1963), and the central Arizona project, which has the
7 capacity to divert into this state a significant portion of this state's entitlement to Colorado river
8 water. The legislature further finds that, due to the low priority on the Colorado river of the
9 central Arizona project and other Arizona Colorado river water users, the susceptibility of this
10 state to future shortages of water on the Colorado river is a threat to the general economy and
11 welfare of this state and its citizens.

12 B. THE LEGISLATURE FURTHER FINDS THAT WATER USERS WITHIN THE
13 CENTRAL ARIZONA PROJECT SERVICE AREA ALSO RELY ON OTHER SURFACE
14 WATER SUPPLIES, THAT THESE SUPPLIES ARE SUSCEPTIBLE TO FUTURE
15 SHORTAGES OF WATER AND THAT THESE SHORTAGES ARE A THREAT TO THE
16 GENERAL ECONOMY AND WELFARE OF THIS STATE AND ITS CITIZENS.

17 B. C. The legislature further finds that future water needs in the states of California and
18 Nevada could exceed the entitlements of those states to Colorado river water. Those future water
19 needs could thereby affect the general economy and welfare of this state and its citizens because

1 of the close economic ties among Arizona, California and Nevada.

2 D. THE LEGISLATURE FURTHER FINDS THAT ARIZONA WATER USERS
3 COULD MORE EFFICIENTLY MANAGE, DISTRIBUTE AND USE AVAILABLE WATER
4 RESOURCES THROUGH THE STORAGE OF WATER SUPPLIES AND THROUGH
5 STORED WATER LENDING ARRANGEMENTS, BUT THAT NOT ALL OF THESE
6 ARIZONA WATER USERS HAVE THE OPPORTUNITIES OR RESOURCES NEEDED TO
7 STORE WATER OR ENTER INTO STORED WATER LENDING ARRANGEMENTS.

8 E. E. The legislature further finds that for the purposes of this chapter diverting
9 Colorado river water for storage off of the Colorado river system is a consumptive use of that
10 water.

11 D. F. The legislature further finds that water banking is complimentary and compatible
12 with existing water management efforts. The Arizona water banking authority will compliment
13 and assist the activities of the central Arizona water conservation district in its mission to provide
14 a dependable and cost-effective water supply.

15 E. G. The legislature therefore finds that it is in the best interest of the general economy
16 and welfare of this state and its citizens to:

17 1. Use the central Arizona project to store otherwise unused Arizona entitlement to
18 Colorado river water within this state to meet future water needs within this state.

19 2. Provide the opportunity to the states of California and Nevada to store currently
20 unused Colorado river water in Arizona to meet future needs in those states.

21 3. PROVIDE THE OPPORTUNITY TO FACILITATE THE STORAGE OF WATER,
22 AS WELL AS STORED WATER LENDING ARRANGEMENTS, BY ENTITIES IN
23 ARIZONA WHICH MAY NOT HAVE THE OPPORTUNITIES OR RESOURCES NEEDED
24 TO STORE WATER.

25 F. H. The public policy and general purposes of this chapter are to:

26 1. Increase utilization of Arizona's Colorado river entitlement that was confirmed to
27 Arizona by the United States supreme court in article ii(b)(1), (2) and (6) of the decree entered at
28 Arizona v. California, 376 U.S. 340 (1964), and that would otherwise be unused in Arizona, by
29 delivering that water into this state through the central Arizona project aqueducts.

30 2. Store water brought into this state through the central Arizona project to protect
31 Arizona municipal and industrial water users against future water shortages on the Colorado river
32 and disruptions of operation of the central Arizona project.

33 3. Store water brought into this state through the central Arizona project to fulfill the
34 water management objectives of this state set forth in chapter 2 of this title.

35 4. Provide the opportunity for storing water brought into this state through the central
36 Arizona project to be available to implement the settlement of water right claims by Indian
37 communities within Arizona.

38 5. Provide the opportunity to authorized agencies in the states of California and Nevada
39 to store otherwise unused Colorado river water in Arizona to assist those states in meeting future
40 water needs.

41 6. PROVIDE THE OPPORTUNITY TO FACILITATE THE STORAGE OF WATER,

1 AS WELL AS STORED WATER LENDING ARRANGEMENTS, BY ENTITIES IN
2 ARIZONA WHICH MAY NOT HAVE THE OPPORTUNITIES OR RESOURCES NEEDED
3 TO STORE WATER.

4 Section 2. Section 45-2402, Arizona Revised Statutes, is amended to read:

5 45-2402. Definitions

6 Unless the context otherwise requires, the terms defined in sections 45-101, 45-402 and 45-
7 802.01 have the same meaning in this chapter and for purposes of this chapter:

- 8 1. "Authority" means the Arizona water banking authority.
- 9 2. "Banking fund" means the Arizona water banking fund.
- 10 3. "Central Arizona water conservation district" or "CAWCD" means the multi-county
11 water conservation district established under title 48, chapter 22.
- 12 4. "Commission" means the Arizona water banking authority commission.
- 13 5. "Decree" means the decree entered by the United States supreme court in Arizona v.
14 California, 376 U.S. 340 (1964).

15 6. "WATER BANKING SERVICES" MEANS SERVICES PROVIDED BY THE
16 AUTHORITY TO PERSONS AND INDIAN COMMUNITIES IN THIS STATE TO
17 FACILITATE FOR THOSE PERSONS AND INDIAN COMMUNITIES STORAGE OF
18 WATER AND STORED WATER LENDING ARRANGEMENTS. WATER BANKING
19 SERVICES INCLUDE ONLY ARRANGEMENTS BY WHICH WATER WILL BE MADE
20 AVAILABLE FOR USE IN ARIZONA. WATER BANKING SERVICES DO NOT INCLUDE
21 INTERSTATE WATER BANKING UNDERTAKEN BY THE AUTHORITY PURSUANT TO
22 ARTICLE 4 OF THIS CHAPTER. WATER BANKING SERVICES MAY INCLUDE, BUT
23 ARE NOT LIMITED TO:

- 24 a. STORAGE OF WATER
- 25 b. OBTAINING WATER STORAGE PERMITS
- 26 c. ACCRUING, EXCHANGING, AND ASSIGNING LONG-TERM STORAGE
27 CREDITS.
- 28 d. LENDING AND OBTAINING REPAYMENT OF LONG-TERM STORAGE
29 CREDITS.

30 7. "WATER BANKING SERVICES AGREEMENT" MEANS AN AGREEMENT
31 ENTERED INTO BETWEEN THE AUTHORITY AND A PERSON OR INDIAN
32 COMMUNITY IN THIS STATE UNDER WHICH THE AUTHORITY WILL PROVIDE
33 WATER BANKING SERVICES TO THAT PERSON OR INDIAN COMMUNITY.

34 Section 3. Section 45-2423, Arizona Revised Statutes, is amended to read:

35 45-2423. Powers and duties of authority

36 A. The authority, acting through its commission, shall:

- 37 1. Administer the Arizona water banking fund in accordance with this chapter.
- 38 2. Coordinate its staffing needs with the director and CAWCD.
- 39 3. Coordinate the storage of water and distribution and extinguishment of long-term
40 storage credits with the director in accordance with this chapter and the water management
41 objectives set forth in chapter 2 of this title.

1 4. Coordinate with CAWCD for the purchase, delivery and storage of Colorado river
2 water delivered through the central Arizona project in accordance with this chapter.

3 5. Coordinate and confer with state agencies, municipal corporations, special districts,
4 authorities, other political subdivisions, private entities, Indian communities and the United
5 States on matters within their jurisdiction relating to the policy and purposes of this chapter.

6 6. Determine, on an annual basis, the quantity of Colorado river water to be stored by the
7 authority and where that storage will occur.

8 7. Account for, hold and distribute or extinguish long-term storage credits in accordance
9 with this chapter.

10 8. Comply with all aspects of chapter 3.1 of this title.

11 9. Adopt an official seal for the authentication of its records, decisions and resolutions.

12 10. Keep the minutes of its meetings, all records, reports and other information relating
13 to its work and programs in permanent form, systematically indexed and filed.

14 B. The authority, acting through its commission, may:

15 1. Apply for and hold water storage permits.

16 2. Accrue, exchange, ASSIGN, LEND and hold long-term storage credits in accordance
17 with this chapter.

18 3. Exchange Colorado river water for any type of water in accordance with chapter 4 of
19 this title.

20 4. ENTER INTO WATER BANKING SERVICES AGREEMENTS.

21 5. CHARGE REASONABLE FEES FOR WATER BANKING SERVICES.

22 6. APPLY FOR AND HOLD ANY WATER QUALITY PERMIT REQUIRED FOR
23 WATER STORAGE BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER
24 TITLE 49, CHAPTER 2, ARTICLE 3 AND BY FEDERAL LAW.

25 4. 7. Make and execute all contracts, including intergovernmental agreements pursuant
26 to title 11, chapter 7, article 3, that shall be signed by the chairperson, or in the chairperson's
27 absence the vice-chairperson, and attested by the secretary, necessary to:

28 (a) Obtain for storage Colorado river water delivered through the central Arizona project.
29 Agreements by which the authority obtains Colorado river water are exempt from the
30 requirements of title 41, chapter 23.

31 (b) OBTAIN FOR STORAGE EFFLUENT, BUT ONLY AFTER THE AUTHORITY
32 HAS STORED ALL AVAILABLE EXCESS CENTRAL ARIZONA PROJECT WATER OR
33 WHEN CENTRAL ARIZONA PROJECT WATER IS OTHERWISE UNAVAILABLE OR
34 UNDELIVERABLE.

35 ~~(b)~~ (c) Affiliate water storage permits held by the authority with storage facility permits.

36 ~~(c)~~ (d) Store Colorado river water AND EFFLUENT at permitted storage facilities.

37 ~~(d)~~ (e) Distribute long-term storage credits earned by the authority to make water
38 available to municipal and industrial users of Colorado river water in this state that are inside or
39 outside of the CAWCD service area, in accordance with the provisions of this chapter.

40 ~~(e)~~ (f) Store Colorado river water in Arizona on behalf of appropriately authorized
41 agencies in California and Nevada.

1 (f) (g) Cause a decrease in Arizona diversions from the Colorado river, ensuring that
2 Arizona will use less than its full entitlement to Colorado river water in years in which California
3 and Nevada agencies are contractually authorized to call on the water stored on their behalf by
4 the authority.

5 (g) (h) Distribute long-term storage credits earned by the authority on behalf of agencies
6 in California and Nevada to Colorado river water users in Arizona to use in place of Colorado
7 river water that would have otherwise been used by those Arizona users.

8 ~~5-~~ 8. Sue and be sued.

9 ~~6-~~ 9. Perform all other acts necessary for the authority to carry out its purposes, powers
10 and duties in accordance with this chapter.

11 ~~7-~~ 10. Submit a request for a general fund appropriation to the legislature each year. A
12 request shall be accompanied by a budget detailing how the appropriation would be used and
13 justifying the need for the appropriation.

14 11. FORM TEMPORARY COMMITTEES AS DEEMED NECESSARY BY THE
15 AUTHORITY TO PROVIDE THE AUTHORITY WITH ADVICE ON ISSUES IDENTIFIED
16 BY THE AUTHORITY. ADVISORY COMMITTEES MAY CONSIST OF MEMBERS OF
17 THE PUBLIC SELECTED BY THE AUTHORITY, MEMBERS OF THE AUTHORITY AND
18 AUTHORITY STAFF.

19 Section 4. Section 45-2425, Arizona Revised Statutes, is amended to read:

20 45-2425. Arizona water banking fund

21 A. The Arizona water banking fund is established. The state treasurer shall establish
22 subaccounts of the banking fund based on funding sources. The authority shall administer the
23 fund in accordance with this chapter.

24 B. The banking fund consists of all of the following:

25 1. Monies appropriated from the state general fund by the legislature.

26 2. Reimbursement for the distribution of long-term storage credits, collected by the
27 authority in accordance with section 45-2457, subsection B, paragraph 2.

28 3. Monies paid to the authority by the recipients of in lieu water at a groundwater savings
29 facility, in accordance with section 45-2455, subsection C.

30 4. Monies collected in accordance with section 45-611, subsection C, paragraph 3.

31 5. Monies deposited in the fund in accordance with section 48-3715.03, subsection B.

32 6. Monies paid to the authority by agencies that have entered into interstate banking
33 agreements with the authority in accordance with section 45-2471.

34 7. MONIES PAID TO THE AUTHORITY BY PERSONS AND INDIAN
35 COMMUNITIES IN THIS STATE THAT HAVE ENTERED INTO WATER BANKING
36 SERVICES AGREEMENTS WITH THE AUTHORITY IN ACCORDANCE WITH SECTION
37 45-2455.01.

38 C. In addition to the monies prescribed in this section, the authority may accept any gifts,
39 grants or donations and deposit those monies in the banking fund.

40 D. Monies in the banking fund are exempt from lapsing under section 35-190. Interest
41 earned on monies in the banking fund shall be credited to the banking fund.

1 E. The authority may use the banking fund to pay all reasonable expenses incurred in
2 carrying out its duties and responsibilities in accordance with this chapter.

3 Section 5. Section 45-2426, Arizona Revised Statutes, is amended to read:

4 45-2426. Annual report

5 A. The commission shall make and submit to the governor, president of the senate and
6 speaker of the house of representatives on or before July 1 of each year a report containing a full
7 and complete account of its transactions and proceedings for the preceding calendar year.

8 B. The report shall contain all of the following:

9 1. An accounting of all monies expended from the banking fund.

10 2. An accounting of all monies in the banking fund remaining available to the authority.

11 3. The amount of water stored by the authority.

12 4. The number of long-term storage credits distributed or extinguished by the authority.

13 5. The purposes for which long-term storage credits were distributed or extinguished by
14 the authority.

15 6. A DESCRIPTION OF THE WATER BANKING SERVICES AND INTERSTATE
16 WATER BANKING TO BE UNDERTAKEN BY THE AUTHORITY DURING THE
17 FOLLOWING TEN YEAR PERIOD, AND A PROJECTION OF THE CAPACITY OF THE
18 AUTHORITY DURING THAT PERIOD TO UNDERTAKE THOSE ACTIVITIES IN
19 ADDITION TO STORING COLORADO RIVER WATER BROUGHT INTO THE STATE
20 THROUGH THE CENTRAL ARIZONA PROJECT FOR ALL OF THE FOLLOWING
21 PURPOSES:

22 a. PROTECTING ARIZONA MUNICIPAL AND INDUSTRIAL WATER USERS
23 AGAINST FUTURE WATER SHORTAGES ON THE COLORADO RIVER AND
24 DISRUPTIONS OF OPERATION OF THE CENTRAL ARIZONA PROJECT.

25 b. FULFILLING THE WATER MANAGEMENT OBJECTIVES OF THIS STATE AS
26 SET FORTH IN CHAPTER 2 OF THIS TITLE.

27 c. MAKING WATER AVAILABLE TO IMPLEMENT THE SETTLEMENT OF
28 WATER RIGHT CLAIMS BY INDIAN COMMUNITIES WITHIN ARIZONA.

29 6:7. Any other matter determined by the authority to be relevant to the policy and
30 purposes of this chapter.

31 Section 6. Section 45-2427, Arizona Revised Statutes, is amended to read:

32 45-2427. Limitation on powers

33 A. This chapter does not authorize the authority to exercise any right of eminent domain.

34 B. The authority shall not store Colorado river water that would otherwise have been
35 used in this state.

36 C. The authority shall not enter into contracts with agencies in California and Nevada for
37 the storage of water on their behalf until both of the following occur:

38 1. Regulations are in effect, promulgated by the secretary of the interior of the United
39 States, that facilitate and allow the contractual distribution of unused entitlement under article
40 II(b)(6) of the decree.

41 2. The director finds that the rules promulgated by the secretary of the interior adequately

1 protect this state's rights to Colorado river water, as those rights are defined by the decree.

2 D. THE AUTHORITY SHALL NOT ENTER INTO WATER BANKING SERVICES
3 AGREEMENTS THAT WILL PROVIDE WATER FOR USE OUTSIDE ARIZONA. THE
4 AUTHORITY MAY CANCEL ANY WATER BANKING SERVICES AGREEMENT,
5 WITHOUT PENALTY OR FURTHER OBLIGATION, IF, AFTER ENTERING INTO A
6 WATER BANKING SERVICES AGREEMENT, THE AUTHORITY FINDS THAT THE
7 AGREEMENT WILL PROVIDE WATER FOR USE OUTSIDE ARIZONA. NOTICE OF
8 THIS SUBSECTION SHALL BE INCLUDED IN EVERY WATER BANKING SERVICES
9 AGREEMENT ENTERED INTO BY THE AUTHORITY. THE CANCELLATION UNDER
10 THIS SUBSECTION SHALL BE EFFECTIVE WHEN WRITTEN NOTICE PROVIDED BY
11 THE AUTHORITY IS RECEIVED BY ALL OTHER PARTIES TO THE WATER BANKING
12 SERVICES AGREEMENT.

13 Section 7. Title 45, chapter 14, is amended by adding a new section 45-2455.01, to read:
14 45-2455.01. Water banking services agreements

15 A. THE AUTHORITY MAY ENTER INTO A WATER BANKING SERVICES
16 AGREEMENT UNDER WHICH THE AUTHORITY WILL LOAN LONG-TERM STORAGE
17 CREDITS TO A PERSON OR AN INDIAN COMMUNITY IN THIS STATE IF ALL OF THE
18 FOLLOWING APPLY:

19 1. THE PERSON OR INDIAN COMMUNITY COULD HAVE LEGALLY
20 OBTAINED THE WATER THAT WAS STORED TO ACCRUE THE LONG-TERM
21 STORAGE CREDITS THAT WILL BE LOANED UNDER THE AGREEMENT, COULD
22 HAVE ACCRUED, IN ACCORDANCE WITH CHAPTER 3.1 OF THIS TITLE, THE LONG-
23 TERM STORAGE CREDITS THAT WILL BE LOANED AND COULD OTHERWISE
24 LEGALLY STORE WATER IN ACCORDANCE WITH THE LAWS OF THIS STATE.

25 2. THE AGREEMENT REQUIRES THE PERSON OR INDIAN COMMUNITY TO
26 PAY THE AUTHORITY ALL COSTS INCURRED BY THE AUTHORITY IN ACCRUING
27 THE LONG-TERM STORAGE CREDITS TO BE LOANED UNDER THE AGREEMENT.

28 3. THE AGREEMENT REQUIRES THAT THE COSTS, SPECIFIED IN
29 PARAGRAPH 2 OF THIS SUBSECTION, FOR EACH LONG-TERM STORAGE CREDIT TO
30 BE LOANED UNDER THE AGREEMENT ARE TO BE PAID TO THE AUTHORITY
31 BEFORE THE AUTHORITY DISTRIBUTES THE CREDIT PURSUANT TO THE
32 AGREEMENT.

33 4. THE AGREEMENT REQUIRES THE PERSON OR INDIAN COMMUNITY TO
34 REIMBURSE THE AUTHORITY FOR THE COSTS OF REPLACING EACH LONG-TERM
35 STORAGE CREDIT LOANED UNDER THE AGREEMENT, TO THE EXTENT THAT COST
36 EXCEEDS THE AMOUNT PAID IN ACCORDANCE WITH PARAGRAPH 3 OF THIS
37 SUBSECTION.

38 5. THE AGREEMENT REQUIRES THE AUTHORITY TO USE GOOD FAITH
39 EFFORTS TO REPLACE THE LONG-TERM STORAGE CREDIT AT A REASONABLE
40 COST TO THE PERSON OR INDIAN COMMUNITY.

41 6. THE AGREEMENT REQUIRES THAT IF THE AUTHORITY IS UNABLE TO

1 REPLACE THE LONG-TERM STORAGE CREDITS FOR ANY REASON DURING THE
2 TEN YEARS FOLLOWING THE DISTRIBUTION OF THE CREDIT, THE PERSON OR
3 INDIAN COMMUNITY SHALL NOT BE EXCUSED FROM REIMBURSING THE COSTS
4 SPECIFIED IN PARAGRAPH 4 OF THIS SUBSECTION, AND THE PERSON OR INDIAN
5 COMMUNITY SHALL PAY TO THE AUTHORITY AT THE END OF THAT TEN YEAR
6 PERIOD THE APPROXIMATE COST THE AUTHORITY WILL EXPEND IN REPLACING
7 THE CREDITS DISTRIBUTED, LESS THE AMOUNT PAID PURSUANT TO PARAGRAPH
8 2 OF THIS SUBSECTION.

9 7. THE AGREEMENT MAY PROVIDE THAT, SUBJECT TO APPROVAL BY THE
10 AUTHORITY, THE OTHER PARTY TO THE AGREEMENT MAY ASSIGN TO THE
11 AUTHORITY THE NUMBER OF LONG-TERM STORAGE CREDITS LOANED TO THE
12 PARTY IN LIEU OF THE PARTY PAYING THE COSTS REQUIRED BY PARAGRAPHS 4,
13 5 AND 6.

14 B. THE AUTHORITY MAY ENTER INTO A WATER BANKING SERVICES
15 AGREEMENT WITH A PERSON OR INDIAN COMMUNITY TO STORE WATER ON
16 BEHALF OF THE PERSON, INDIAN COMMUNITY OR OTHER BENEFICIARY NAMED
17 IN THE AGREEMENT, IF ALL OF THE FOLLOWING APPLY:

18 1. THE PERSON, INDIAN COMMUNITY OR NAMED BENEFICIARY COULD
19 LEGALLY OBTAIN THE WATER THAT THE AUTHORITY WILL STORE UNDER THE
20 AGREEMENT, COULD ACCRUE LONG-TERM STORAGE CREDITS, IN ACCORDANCE
21 WITH CHAPTER 3.1 OF THIS TITLE, FOR THE WATER TO BE STORED AND COULD
22 OTHERWISE LEGALLY STORE WATER IN ACCORDANCE WITH THE LAWS OF THIS
23 STATE.

24 2. THE AGREEMENT REQUIRES THE PERSON OR INDIAN COMMUNITY
25 ENTERING INTO THE AGREEMENT TO PAY TO THE AUTHORITY ALL COSTS THAT
26 ARE OR WILL BE INCURRED BY THE AUTHORITY IN ENTERING INTO AND
27 EXECUTING ITS OBLIGATIONS UNDER A WATER BANKING SERVICES
28 AGREEMENT.

29 C. IN DETERMINING COSTS OF PERFORMING WATER BANKING SERVICES
30 PURSUANT TO SUBSECTIONS A AND B, THE AUTHORITY MAY INCLUDE THE
31 FOLLOWING COSTS:

32 1. THE COST OF ACQUIRING WATER.

33 2. THE COST OF DELIVERING THAT WATER TO A STORAGE FACILITY,
34 INCLUDING FEES FOR THE OPERATION, MAINTENANCE, PUMPING ENERGY AND
35 CAPITAL COSTS OF THE CENTRAL ARIZONA PROJECT, AS ESTABLISHED BY THE
36 CAWCD, AND OTHER AQUEDUCTS.

37 3. THE COST OF STORING WATER, INCLUDING CONSTRUCTION, OPERATION
38 AND MAINTENANCE COSTS ASSOCIATED WITH USING A STORAGE FACILITY.

39 4. A FEE EQUIVALENT TO THE APPROXIMATE AMOUNT OF
40 ADMINISTRATIVE, LEGAL AND TECHNICAL EXPENSES INCURRED BY THE
41 AUTHORITY IN ENTERING INTO AND EXECUTING ITS OBLIGATIONS UNDER A

1 WATER BANKING SERVICES AGREEMENT.

2 5. ANY ADDITIONAL COSTS THE AUTHORITY DEEMS NECESSARY TO
3 ENTER INTO AND EXECUTE ITS OBLIGATIONS UNDER A WATER BANKING
4 SERVICES AGREEMENT.

5 D. A WATER BANKING SERVICES AGREEMENT SHALL REQUIRE A PERSON
6 ENTERING INTO THE AGREEMENT TO OBTAIN A PERFORMANCE BOND TO
7 ENSURE PAYMENT TO THE AUTHORITY OF ALL MONIES OWED TO THE
8 AUTHORITY UNDER THE AGREEMENT, UNLESS THE PERSON IS A GOVERNMENT
9 ENTITY, POLITICAL SUBDIVISION OR MUNICIPAL CORPORATION ORGANIZED
10 UNDER OR SUBJECT TO THE CONSTITUTION AND LAWS OF THIS STATE. IF THE
11 PERSON ENTERING INTO THE WATER BANKING SERVICES AGREEMENT IS AN
12 INDIAN COMMUNITY IN THIS STATE OR A GOVERNMENT ENTITY, POLITICAL
13 SUBDIVISION OR MUNICIPAL CORPORATION ORGANIZED UNDER OR SUBJECT TO
14 THE CONSTITUTION AND LAWS OF THIS STATE, THE BANKING SERVICES
15 AGREEMENT MAY REQUIRE THAT PERSON TO OBTAIN A PERFORMANCE BOND
16 TO ENSURE PAYMENT TO THE AUTHORITY OF ALL MONIES OWED TO THE
17 AUTHORITY UNDER THE AGREEMENT.

18 Section 8. Section 45-2456, Arizona Revised Statutes, is amended to read:

19 45-2456. Annual plan of operation

20 A. By January 1 of each year, the authority shall adopt a plan of operation for that
21 calendar year.

22 B. In developing the plan of operation, the authority shall consider all of the following:

- 23 1. The amount of Colorado river water available for storage.
- 24 2. The advice of the department of water resources regarding where water storage would
25 most contribute to fulfilling the water management objectives set forth in chapter 2 of this title.
- 26 3. The advice of CAWCD regarding the amount and location of water delivery and
27 storage that is feasible.
- 28 4. The respective costs of storing water at available storage facilities.
- 29 5. The amount of storage allowed by water storage permits held by the authority.
- 30 6. The monies available from the banking fund.
- 31 7. The way in which water stored could be used by the authority to achieve the policy
32 and purposes of this chapter.

33 8. THE OBLIGATIONS OF THE AUTHORITY UNDER ANY WATER BANKING
34 SERVICES AGREEMENT IN WHICH THE AUTHORITY HAS ENTERED.

35 ~~8~~:9. Any other factor the authority determines to be relevant.

36 C. The authority shall prepare a draft plan of operation each year. The authority shall
37 solicit public comment on the draft plan of operation by presenting the draft plan of operation:

- 38 1. To the groundwater users advisory councils for the Tucson, Phoenix and Pinal active
39 management areas. The presentation shall be made at publicly noticed open meetings of each
40 advisory council at which members of the public shall be allowed to comment on the draft plan
41 of operation.

1 2. If any water storage during the year is to occur outside of an active management area,
2 to the county board of supervisors for each county in which the storage is to occur. The
3 presentation shall be made at a publicly noticed open meeting of the county board of supervisors
4 at which members of the public shall be allowed to comment on the draft plan of operation.

5 D. The authority may revise the draft plan of operation based on the public comment
6 received.

7 E. An adopted plan of operation shall include all of the following:

8 1. A projection of expenditures for acquiring water.

9 2. A projection of the amount of water to be acquired each month by the authority.

10 3. A projection of the cost of delivering that water through the central Arizona project to
11 a storage facility, including fees for the operation, maintenance, pumping energy and capital costs
12 of the central Arizona project as established by CAWCD.

13 4. A projection of expenditures for water storage.

14 5. A projection of water storage permits to be obtained and a projection of with which
15 storage facility permit each water storage permit will be affiliated.

16 6. A projection of the amount of water to be stored, accounted for by active management
17 area, and if water storage will occur outside of an active management area, by groundwater basin
18 or subbasin.

19 7. A projection of long-term storage credits that will be distributed or extinguished,
20 accounted for by location where the long-term storage credits were stored, the purpose for which
21 the distribution or extinguishment will occur and the persons to whom the long-term storage
22 credits will be distributed.

23 8. A PROJECTION OF LONG-TERM STORAGE CREDITS THAT WILL BE
24 STORED, LOANED, REPLACED OR DISTRIBUTED PURSUANT TO ANY WATER
25 BANKING SERVICES AGREEMENT INTO WHICH THE AUTHORITY HAS ENTERED

26 8.9. Any other matter determined to be relevant by the authority.

27 F. The authority may modify an adopted plan of operation.

28 G. The authority shall operate in accordance with its adopted or modified plan of
29 operation.

30 Section 9. Section 45-2457, Arizona Revised Statutes, is amended to read:

31 45-2457. Accounting; rules of operation

32 A. The authority shall develop an accounting system for the long-term storage credits
33 accrued by the authority. The accounting system shall be designed to allow the authority to
34 determine which funding source of the banking fund paid for each long-term storage credit
35 accrued by the authority.

36 B. The authority shall operate in accordance with all of the following rules of operation:

37 1. The authority shall reserve a reasonable number of long-term storage credits accrued
38 with general fund appropriations for the benefit of municipal and industrial users of Colorado
39 river water in this state that are outside of the service area of CAWCD.

40 2. The authority may distribute long-term storage credits accrued with general fund
41 appropriations for both of the following:

1 (a) To make water available to a municipal and industrial user of Colorado river water in
2 this state that is outside of the service area of CAWCD, if both of the following apply:

3 (i) The municipal and industrial user would otherwise suffer a water shortage. The
4 authority may distribute long-term credits to the extent reasonably necessary to offset the water
5 shortage.

6 (ii) The authority collects reimbursement for the cost to the authority of replacing the
7 long-term storage credits distributed. THE AUTHORITY MAY REPLACE THE LONG-TERM
8 STORAGE CREDITS IN ANY YEAR IT DEEMS APPROPRIATE BUT SHALL USE GOOD
9 FAITH EFFORTS TO REPLACE THE LONG-TERM STORAGE CREDITS AT A
10 REASONABLE COST TO THE PERSON WHO IS RESPONSIBLE FOR REIMBURSING
11 THE AUTHORITY FOR THE CREDITS DISTRIBUTED.

12 (b) To make water available to CAWCD to the extent necessary for CAWCD to meet the
13 demands of its municipal and industrial subcontractors, if all of the following apply:

14 (i) CAWCD's normal diversions from the Colorado river have been or will be disrupted
15 by shortages on the river or by disruptions in the operation of the central Arizona project.

16 (ii) The authority does not distribute for this purpose the long-term storage credits
17 reserved in accordance with paragraph 1 of this subsection.

18 (iii) The authority collects reimbursement from CAWCD for the cost to the authority of
19 replacing the long-term storage credits distributed. THE AUTHORITY MAY REPLACE THE
20 LONG-TERM STORAGE CREDITS IN ANY YEAR IT DEEMS APPROPRIATE BUT
21 SHALL USE GOOD FAITH EFFORTS TO REPLACE THE LONG-TERM STORAGE
22 CREDITS AT A REASONABLE COST TO CAWCD.

23 3. The authority may distribute or extinguish long-term storage credits accrued with
24 general fund appropriations to implement the settlement of water right claims by Indian
25 communities in this state.

26 4. On request from the director, the authority may extinguish long-term storage credits
27 accrued with general fund appropriations to fulfill the water management objectives set forth in
28 chapter 2 of this title.

29 5. The authority may exchange long-term storage credits accrued with general fund
30 appropriations for long-term storage credits held by other persons if the long-term storage credits
31 received by the authority were stored in a location that better enables the authority to fulfill the
32 purposes and policies of this chapter than were the long-term storage credits exchanged by the
33 authority. For the purposes of this paragraph, the authority may make exchanges of long-term
34 storage credits stored in one active management area for long-term storage credits stored in a
35 different active management area or of long-term storage credits stored in one groundwater basin
36 for long-term storage credits stored in a different groundwater basin.

37 6. The authority shall distribute or extinguish long-term storage credits accrued with
38 monies collected in accordance with section 45-611, subsection C, paragraph 3 only for the
39 benefit of the active management area in which the monies were collected. The authority may
40 distribute or extinguish these long-term storage credits to implement the settlement of water right
41 claims by Indian communities in this state or, on request from the director, to meet the water

1 management objectives set forth in chapter 2 of this title.

2 7. The authority shall distribute long-term storage credits accrued with monies deposited
3 in the fund in accordance with section 48-3715.03, subsection b B only for the benefit of the
4 county in which the monies were collected. The authority shall distribute these long-term storage
5 credits to CAWCD to the extent necessary to meet the demands of CAWCD's municipal and
6 industrial subcontractors during times in which CAWCD's diversions from the Colorado river
7 have been or will be disrupted by shortages on the Colorado river or by disruptions in operation
8 of the central Arizona project.

9 8. FOR EACH COUNTY WITHIN THE CAWCD SERVICE AREA, UPON A
10 DETERMINATION BY THE AUTHORITY THAT THE NUMBER OF LONG-TERM
11 STORAGE CREDITS ACCRUED WITH MONIES DEPOSITED IN THE FUND IN
12 ACCORDANCE WITH SECTION 48-3715.03, SUBSECTION B, EXCEEDS THE NEEDS
13 SPECIFIED IN PARAGRAPH 7 OF THIS SUBSECTION FOR THAT COUNTY, THE
14 AUTHORITY SHALL DISTRIBUTE THOSE EXCESS LONG-TERM STORAGE CREDITS
15 TO MUNICIPAL WATER PROVIDERS WITHIN THAT COUNTY THAT ARE AT THE
16 TIME OF DISTRIBUTION EXPERIENCING SURFACE WATER SUPPLY SHORTAGES
17 NOT ASSOCIATED WITH THE CENTRAL ARIZONA PROJECT. THE AUTHORITY
18 SHALL DISTRIBUTE TO EACH SUCH MUNICIPAL WATER PROVIDER THE LESSER
19 OF THE FOLLOWING NUMBER OF LONG-TERM STORAGE CREDITS:

20 a. THE TOTAL NUMBER OF CREDITS DETERMINED TO BE AVAILABLE BY
21 THE AUTHORITY UNDER THIS PARAGRAPH MULTIPLIED BY THE PERCENTAGE
22 CREATED BY DIVIDING A NUMERATOR EQUALING THE AMOUNT OF REVENUES
23 PAID PURSUANT TO SECTION 48-3715.02, SUBSECTIONS B AND C, BY TAXPAYERS
24 WHICH ARE WITHIN BOTH THE BOUNDARIES OF THE MUNICIPAL PROVIDER THAT
25 IS EXPERIENCING THE SHORTAGE AND THE BOUNDARIES OF THE SURFACE
26 WATER SUPPLY SYSTEM THAT IS EXPERIENCING THE SHORTAGE BY A
27 DENOMINATOR EQUALING THE TOTAL REVENUES PAID PURSUANT TO SECTION
28 48-3715.02, SUBSECTIONS B AND C, BY ALL TAXPAYERS WHICH ARE LOCATED
29 WITHIN BOTH THE BOUNDARIES OF A MUNICIPAL WATER PROVIDER AND THE
30 BOUNDARIES OF A SURFACE WATER SUPPLY SYSTEM IN THE COUNTY. IN
31 MAKING THESE CALCULATIONS, THE AUTHORITY SHALL USE THE AMOUNTS OF
32 REVENUE PAID BY TAXPAYERS DURING THE MOST RECENT TAX YEAR FOR
33 WHICH THIS INFORMATION IS AVAILABLE.

34 b. TWENTY PERCENT OF THE TOTAL SURFACE WATER SHORTAGE THE
35 MUNICIPAL AND INDUSTRIAL WATER PROVIDER IS EXPERIENCING.

36 9. THE AUTHORITY SHALL DISTRIBUTE OR REPLACE LONG-TERM STORAGE
37 CREDITS ACCRUED WITH MONIES COLLECTED PURSUANT TO WATER BANKING
38 SERVICES AGREEMENTS IN ACCORDANCE WITH THE TERMS OF THOSE
39 AGREEMENTS.

40 C. Any other long-term storage credits accrued by the authority may be distributed or
41 extinguished by the authority in accordance with the policy and purposes of this chapter.

1 D. Except as provided by subsection B, paragraph 7 of this section and except as
2 provided by agreements entered into by the authority, the decision to distribute or extinguish any
3 long-term storage credit accrued by the authority is at the complete discretion of the authority.

4 Section 10. Section 48-3715, Arizona Revised Statutes, is amended to read:

5 48-3715. Tax levy

6 A. On or before the second Monday in August of each year, the clerk of the county board of
7 supervisors of each county within the district shall certify to the district board the total assessed
8 valuation of all taxable property in the county. On or before the third Monday in August of each year,
9 the district board shall fix the amount to be raised by direct taxation for the purpose of carrying out
10 the provisions of this chapter, and shall levy a tax sufficient to raise such amount. Such tax shall not
11 exceed ten cents on each one hundred dollars of assessed valuation in the district. The district board
12 shall forthwith certify such tax rate to the board of supervisors of each county within the district,
13 which boards at the time of levying general county taxes shall levy and cause to be collected taxes
14 on the taxable property within such county at the tax rate fixed by the district board. The tax when
15 collected shall be paid to the state treasurer and be credited to the district fund to be expended by the
16 district only for purposes authorized by this chapter, which shall include costs and expenses of
17 administration.

18 B. The district board shall charge and collect a fee in lieu of taxes paid pursuant to subsection
19 A for each acre-foot of central Arizona project water purchased or leased and delivered to or credited
20 to a purchaser or lessee. The amount of this fee shall be computed by dividing the sum of the taxes
21 levied in each county within the district pursuant to subsection A in the PREVIOUS year in which
22 the fee is charged by the AVERAGE ANNUAL amount of Colorado river water ~~available for~~
23 ~~diversion into the central Arizona project as determined by the secretary during that year~~
24 DELIVERED THROUGH THE CENTRAL ARIZONA PROJECT SYSTEM FOR NON-FEDERAL
25 MUNICIPAL AND INDUSTRIAL AND AGRICULTURAL USE OVER THE PREVIOUS THREE
26 (3) YEARS. This fee does not apply to:

27 1. Indian tribes with respect to water used directly on Indian reservation land in this state or
28 on land owned in this state by the Indian tribe.

29 2. Water service providers whose customers are real property owners within the service area
30 of the district and who pay the tax levied pursuant to subsection A. For purposes of this paragraph,
31 "water service provider" means any person that has any obligation or duty of any nature to deliver
32 water within the district's service area.

33 3. Persons who have entered into a contract with the district under which they agree to make
34 payments in lieu of the tax levied pursuant to subsection A.

35 4. Persons that are real property owners within the service area of the district and that will
36 use the water within the district's service area.

37 5. The Arizona water banking authority if that authority is acquiring water that will be used
38 for the benefit of those persons prescribed in this subsection.

39